United States Court of Appeals
Fifth Circuit
F I L E D
January 8, 2007
Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-20352
Summary Calendar

MIKE LEAL GUERRERO,

Plaintiff-Appellant,

versus

MELANIE POTTER; DR. LARRY LARGENT;
NOORALLAN MACKWANI; DR. NAIK KOKILA,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:06-CV-881

Before JOLLY, DENNIS, and CLEMENT, Circuit Judges

PER CURIAM:*

Mike Leal Guerrero, Texas prisoner # 567945, appeals the district court's dismissal of his 42 U.S.C. § 1983 complaint, in which he raised claims of deliberate indifference to his serious medical needs. The district court dismissed the complaint pursuant to 28 U.S.C. § 1915(e)(2)(B) as frivolous and for failure to state a claim upon which relief could be granted. The district court determined that Guerrero's complaint was barred by

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* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

the applicable limitations period and, alternatively, that Guerrero was not entitled to relief on the merits of his claim.

Guerrero's civil rights complaint was not filed within two years of the date that he learned of his injury. Owens v. Okure, 488 U.S. 235, 249-50 (1989); Piotrowski v. City of Houston, 51 F.3d 512, 516 (5th Cir. 1995); TEX. CIV. PRAC. AND REM. CODE § 16.003(a). His previous complaint challenging the actions of the defendants was dismissed voluntarily pursuant to Guerrero's motion and thus did not toll the limitations period. See Burge v. Parish of St. Tammany, 996 F.2d 786, 787 (5th Cir. 1993); Guaranty County Mut. Ins. Co. v. Reyna, 700 S.W.2d 325, 327 (Tex. App. 1985).

Guerrero's appeal is without arguable merit and is frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is dismissed. See 5TH CIR. R. 42.2. Guerrero is cautioned that the dismissal of this appeal as frivolous, and the district court's dismissal of his complaint as frivolous, count as strikes under 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996). He is cautioned that if he accumulates three strikes under § 1915(g), he will not be able to proceed in forma pauperis (IFP) in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. See § 1915(g).

APPEAL DISMISSED; SANCTION WARNING ISSUED.