IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16-10037
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

May 11, 2017

Lyle W. Cayce
Clerk

MIGUEL ANGEL BACILIO,

                    Plaintiff–Appellant,

versus

BLAKE BURNS, Plaintiff's Attorney;
MICHELLE HARTMAN, Assistant District Attorney;
ELIZABETH BEACH, District Judge; BRYAN COLLIER,

                    Defendants–Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:15-CV-417

Before JOLLY, SMITH, and GRAVES, Circuit Judges.

PER CURIAM:[*]

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 16-10037

Miguel Bacilio, Texas prisoner # 1912589, appeals the dismissal of his 42 U.S.C. § 1983 complaint under 28 U.S.C. §§ 1915(e)(2)(B)(i) and (ii) and 1915A(b)(1) as frivolous and for failure to state a claim on which relief could be granted. Our review is *de novo*. *Green v. Atkinson*, 623 F.3d 278, 279–80 (5th Cir. 2010).

The district court did not err in dismissing in light of the fact that Bacilio's claims regarding his state criminal conviction are barred under *Heck v. Humphrey*, 512 U.S. 477, 486–87 (1994), because the conviction was not reversed, expunged, declared invalid, or called into question by the issuance of a writ of habeas corpus. Accordingly, the judgment is AFFIRMED, and Bacilio's request for appointment of counsel on appeal is DENIED.

The district court's dismissal of Bacilio's complaint as frivolous and for failure to state a claim on which relief may be granted counts as a strike under 28 U.S.C. § 1915(g). *See Adepegba v. Hammons*, 103 F.3d 383, 387–88 (5th Cir. 1996). Bacilio is WARNED that if he accumulates three strikes, he will not be allowed to proceed *in forma pauperis* 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).