App. A

# United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
**FILED**
August 17, 2026
Lyle W. Cayce
Clerk

No. 25-40542

JAMES ARTHUR MEEKS, III,

*Plaintiff—Appellant*,

*versus*

TONY RAY, *Deputy, Fannin County Sheriff's Office*; MARK JOHNSON, *Sheriff, Fannin County Sheriff's Office*; FNU SAXON, *Nurse, Fannin County Detention Center*; FNU BARNUM, *Nurse, Health Service Administrator, Fannin County Detention Center*; FNU MELTON, REGISTERED NURSE, *Fannin County Detention Center*; AMARNATH LAXMINARAYAN, *Doctor, Fannin County Detention Center*; FNU JOHNSON, *Correctional Officer, Grievances Coordinator, Fannin County Detention Center*; FNU KING, *Physician Assistant, Fannin County Detention Center*; FANNIN COUNTY MUNICIPALITY; LASALLE MANAGEMENT COMPANY, L.L.C.; LASALLE CORRECTIONS, L.L.C.; MELISSA WATKINS, *Fannin County Detention Center Booking Officer*; NICK TREDWAY, *Chief Deputy, Fannin County Sheriff's Office*; STACY KING, *Warden*; LASALLE CORRECTIONS WEST, L.L.C.; FNU HILTY, *Nurse, Fannin County Detention Center*,

*Defendants—Appellees*.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:22-CV-237

PUBLISHED ORDER

Before JONES, HO, and ENGELHARDT, *Circuit Judges*.

JAMES C. HO, *Circuit Judge*:

Under the "three strikes" provision of the Prison Litigation Reform Act, a prisoner may not bring a civil action or appeal *in forma pauperis*, if he has brought an action or appeal "on 3 or more prior occasions, while incarcerated," that has been "dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted," unless the prisoner is under imminent danger of serious physical injury. 28 U.S.C. § 1915(g).

The prisoner in this case, James Meeks, committed his third strike when the district court dismissed this very case for failure to state a claim upon which relief may be granted. He nevertheless seeks to proceed *in forma pauperis* in this appeal. He theorizes that his third strike should not trigger the three strikes rule, until after he has received appellate review of that dismissal.

Whether the three strikes rule applies when the third strike is itself the subject of the appeal is an open question in this circuit. *See Alexander v. Texas Dept. of Crim. Just.*, 951 F.3d 236, 241 n.1 (5th Cir. 2020). The circuit courts are split on the issue. *Compare Richey v. Dahne*, 807 F.3d 1202, 1209–10 (9th Cir. 2015) (holding that prisoners may appeal *in forma pauperis* from a third strike), *and Taylor v. Grubbs*, 930 F.3d 611, 620 (4th Cir. 2019) (following *Richey*), *with Parker v. Montgomery Cnty. Corr. Facility/Bus. Off. Mgr.*, 870 F.3d 144, 151–54 (3rd Cir. 2017) (applying the three strikes rule to the pending appeal).

In *Coleman v. Tollefson*, 575 U.S. 532 (2015), the Supreme Court applied the three strikes rule, and denied *in forma pauperis* status, even

though the prisoner's third dismissal remained pending on appeal. To be sure, the case involved an appeal in a different case—and not the appeal of the third strike itself. *See id.* at 534. But that is a distinction without a difference. Both the text of the PLRA and the Supreme Court's analysis in *Coleman* makes clear that the three strikes rule applies with equal force in either appeal. "A prior dismissal on a statutorily enumerated ground counts as a strike even if the dismissal is the subject of an appeal. That, after all, is what the statute literally says." *Id.* at 537. And that logic "readily applies" here, even though the appeal is "of the same underlying case." *Alexander*, 951 F.3d at 244 (Ho, J., concurring).

*Coleman* plainly overrules our court's prior holding that "[a] dismissal should not count against a petitioner until he has exhausted or waived his appeals." *Adepegba v. Hammons*, 103 F.3d 383, 387–88 (5th Cir. 1996). We welcome the opportunity to align the law of our circuit with the plain text of the PLRA.

The motion to proceed on appeal *in forma pauperis* is denied.