

August 28, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-60853
Conference Calendar

CARL WATTS,

Plaintiff-Appellant,

versus

ANTHONY H. OGLESBY,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 4:05-CV-123

Before DAVIS, SMITH, and WIENER, Circuit Judges.

PER CURIAM:*

Carl Watts, Mississippi prisoner # 77138, appeals the 28 U.S.C. § 1915(e)(2)(B)(ii) dismissal for failure to state a claim of his 42 U.S.C. § 1983 lawsuit against his court-appointed counsel in a criminal matter. Although he renews the allegations of his complaint, Watts does not challenge the district court's conclusion that his claims were improperly brought in a § 1983 action, were barred by Heck v. Humphrey, 512 U.S. 477 (1994), or failed for lack of state action. By failing to brief any

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

argument challenging the district court's reasons for dismissal, Watts has abandoned the only grounds for appeal. See Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993). The appeal is wholly without arguable merit, is frivolous, and is therefore dismissed. See 5TH CIR. R. 42.2; Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983).

The district court's dismissal of Watts' complaint counts as a strike for purposes of 28 U.S.C. § 1915(g), as does the dismissal of the instant appeal. See Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996). Watts has accumulated two strikes in Watts v. Bailey, No. 05-60822 (5th Cir. Aug. 25, 2006). Because Watts has now accumulated more than three strikes, he is barred from proceeding 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 28 U.S.C. § 1915(g).

DISMISSED AS FRIVOLOUS; 28 U.S.C. § 1915(g) BAR IMPOSED.