

June 18, 2007

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 06-50184  
Conference Calendar

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ANDREW FRANK LESTER,

Plaintiff-Appellant,

versus

BRAD LIVINGSTON; DOUG DRETKE; CHRISTINA MELTON CRAIN; DON B.  
JONES; WILLIAM MOODY; ADRIAN A. ARRIAGA; MARY BACON; OLIVER J.  
BELL; PATRICIA A. DAY; PIERCE MILLER; GREGORY COLEMAN; JOHN OR  
JANE DOES,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 5:05-CV-1117  
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Before JONES, Chief Judge, and JOLLY and DENNIS, Circuit Judges.

PER CURIAM:\*

Andrew Frank Lester, Texas prisoner # 695275, moves for leave to proceed in forma pauperis (IFP) on appeal following the dismissal, as frivolous, of his 42 U.S.C. § 1983 civil rights complaint. See 28 U.S.C. § 1915(a)(3). We construe the motion as a challenge to the district court's certification that the appeal is not taken in good faith. See Baugh v. Taylor, 117 F.3d 197, 202 (5th Cir. 1997).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Lester's motion does not directly challenge the district court's reasons for finding his complaint frivolous. Failure to identify an error in the district court's analysis has the same effect as though the appellant had not appealed at all. Brinkmann v. Dallas County Deputy Sheriff Abner, 813 F.2d 744, 748 (5th Cir. 1987). Although pro se briefs are liberally construed, even pro se litigants must brief arguments to preserve them. Yohey v. Collins, 985 F.2d 222, 225 (5th Cir. 1993).

The instant appeal is without arguable merit and is frivolous. Accordingly, Lester's request for IFP status is denied, and the appeal is dismissed. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5TH CIR. R. 42.2. Lester is cautioned that the dismissal of his complaint by the district court and our dismissal of this appeal as frivolous both count as strikes under 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 385-87 (5th Cir. 1996). Lester also is cautioned that if he accumulates three strikes under § 1915(g), he may not proceed 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).

MOTION DENIED; APPEAL DISMISSED; SANCTION WARNING ISSUED.