

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 01-20697  
Conference Calendar

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ARTHUR E. JOHNSON,

Plaintiff-Appellant,

versus

TOMMY THOMAS, Sheriff, Harris County;  
BILLY RAY KELLEY; DEPUTIES &  
JAILERS, SEVERAL; LAWARANCE HAYES;  
ROBERT M. FENLON,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. H-01-CV-129  
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February 21, 2002

Before JOLLY, JONES, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Arthur E. Johnson, Texas prisoner #1047508, has filed an appeal following the district court's dismissal of his pro se 42 U.S.C. § 1983 complaint for failure to prosecute, the denial of his FED. R. CIV. P. 59(e) motion, and the denial of his motion to proceed in forma pauperis (IFP) in the district court.

Johnson's notice of appeal is timely only as to the district court's denial of the motion to proceed IFP in the district

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

court. See FED. R. APP. P. 4(a)(1)(A); United States v. Merrifield, 764 F.2d 436, 437 (5th Cir. 1985). Johnson does not argue that the district court erred in denying his motion to proceed IFP, and he has therefore waived the only issue on appeal. See Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993).

This appeal is frivolous, and it is DISMISSED. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5TH CIR. R. 42.2. The dismissal of this appeal counts as one strike for purposes of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 387 (5th Cir. 1996). Johnson is warned that if he accumulates three strikes he will be barred from proceeding IFP in any civil action or appeal brought in a United States court unless he is under imminent danger of serious physical injury. See 28 U.S.C. § 1915(g). Johnson's motion for appointment of counsel is DENIED.

APPEAL DISMISSED AS FRIVOLOUS; SANCTIONS WARNING ISSUED;  
MOTION FOR APPOINTMENT OF COUNSEL DENIED.