

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 01-31221  
Conference Calendar

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BILLY M. McCOY,

Plaintiff-Appellant,

versus

JERRY L. JONES;  
DANIEL MILTON MOORE, III;  
JIMMY N. DIMOS; JERRY FINLEY,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Western District of Louisiana  
USDC No. 01-CV-770  
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April 10, 2002

Before SMITH, DeMOSS, and PARKER, Circuit Judges.

PER CURIAM:\*

Billy M. McCoy, Louisiana prisoner # 75868, proceeding pro se and in forma pauperis (IFP), appeals the dismissal as frivolous of his 42 U.S.C. § 1983 complaint against District Attorney Jerry L. Jones, Judge Daniel Milton Moore, III, and his defense attorneys, Jimmy N. Dimos and Jerry Finley. Because McCoy does not allege that any defendant was acting outside the scope of his duties as prosecuting attorney, judge, or defense attorney, each of these defendants is immune from suit for money

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

damages. See Polk County v. Dodson, 454 U.S. 312, 325 (1981); see also Boyd v. Biggers, 31 F.3d 279, 285 (5th Cir. 1994).

Although McCoy amended his complaint to seek injunctive and declaratory relief, FED. R. CIV. P. 15(a), those claims are meritless as well. All of McCoy's claims are challenges to the fact or duration of his custody, and his sole relief is a writ of habeas corpus. See Preiser v. Rodriguez, 411 U.S. 475, 499 (1973). This appeal is without arguable merit and, thus, frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED, and McCoy's request for the appointment of counsel is DENIED. 5TH CIR. R. 42.2; Mayfield v. Collins, 918 F.2d 560 (5th Cir. 1990).

The three-strikes provision of 28 U.S.C. § 1915(g) "prohibits a prisoner from proceeding IFP if he has had three actions or appeals dismissed for frivolousness, maliciousness, or failure to state a claim." Carson v. Johnson, 112 F.3d 818, 819 (5th Cir. 1997). McCoy has previously had at least one strike against him. McCoy v. Stalder, No. 97-48-A-1 (M.D. La. Mar. 10, 1997). McCoy has acquired another two strikes as a result of this frivolous complaint and appeal. See Adepegba v. Hammons, 103 F.3d 383, 386-88 (5th Cir. 1996). He now has at least three strikes. Accordingly, McCoy may no longer 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 28 U.S.C. § 1915(g).

APPEAL DISMISSED; 28 U.S.C. § 1915(g) BAR IMPOSED; REQUEST FOR COUNSEL DENIED.