

April 23, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-60567
Conference Calendar

MICHAEL HENRY SMITH,

Plaintiff-Appellant,

versus

UNKNOWN ALVIDEREZ; BRUCE DUPONT; JEROME FORD;
UNKNOWN GIBSON; STACEY HOLLISTER; CATERICIA HOWARD;
UNKNOWN MORRIS; MARVIN ORANGE; UNKNOWN SHADRACK;
HELLEN VIVIAN; TOM L. WOOTEN; KHURSHID Z. YUSUFF,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 5:99-CV-114-BrS

Before DAVIS, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

Michael Henry Smith, federal prisoner # 04325-003, appeals from the district court's dismissal of his action under Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971), for failure to exhaust administrative remedies. In a one-page brief, Smith baldly asserts that he did exhaust his administrative remedies, without citing any authority or portions

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

of the record to support his contention. Smith has inadequately briefed this issue, and it is deemed abandoned. See Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993); FED. R. APP. P. 28(a)(9). Further, a review of the record shows that the district court did not err in dismissing the complaint for failure to exhaust. See Porter v. Nussle, 534 U.S. 516, 524 (2002); 42 U.S.C. § 1997e(a).

Smith's appeal is without arguable merit, is frivolous, and is therefore DISMISSED. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5TH CIR. R. 42.2. This court's dismissal of the instant appeal counts as a "strike" for purposes of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 385-87 (5th Cir. 1996). Smith is CAUTIONED that if he accumulates three strikes under 28 U.S.C. § 1915(g), he will not be able to proceed 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).

APPEAL DISMISSED; THREE-STRIKES WARNING ISSUED.