

October 22, 2003

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-20162  
Conference Calendar

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M. RODNEY E. JONES,

Plaintiff-Appellant,

versus

WINDSOR FROZEN FOOD COMPANY INC.,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. H-02-CV-2645  
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Before KING, Chief Judge, and JOLLY and STEWART, Circuit Judges.

PER CURIAM:\*

M. Rodney Jones, prisoner # 244189, is an inmate in the South Carolina Department of Corrections. Jones appeals the dismissal of his suit alleging gross negligence as frivolous. Because Jones fails to address the district court's determination that his claims are frivolous, any challenge to that determination is, therefore, deemed abandoned. See Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993). Jones's argument that the magistrate judge had a duty to issue a report and recommendation

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

after service on the defendant is without merit inasmuch as the district court was not required to appoint a magistrate judge. See 28 U.S.C. § 636. Accordingly, the instant appeal is DISMISSED as frivolous. See 28 U.S.C. § 1915(e)(2)(B)(i); 5TH CIR. R. 42.2.

The district court's dismissal of the present case and this court's dismissal of the appeal count as two strikes against Jones for purposes of 28 U.S.C. § 1915(g). See 28 U.S.C. § 1915(g); see, e.g., Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996). Jones is WARNED that if he accumulates three strikes 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 28 U.S.C. § 1915(g).