

April 17, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-51541
Conference Calendar

ANTONIO STEELE,

Plaintiff-Appellant,

versus

DANIEL VALENZUELA; DR. SHERI TALLEY,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:03-CV-100

Before HIGGINBOTHAM, BENAVIDES, and PRADO, Circuit Judges.

PER CURIAM:*

Antonio Steele, Texas prisoner # 923537, has filed a motion for leave to proceed in forma pauperis (IFP) on appeal. The district court denied Steele's IFP motion and certified that the appeal was not taken in good faith. By moving for IFP, Steele is challenging the district court's certification. See Baugh v. Taylor, 117 F.3d 197, 202 (5th Cir. 1997).

In district court, Steele contended that the defendants had violated his First, Eighth, and Fourteenth Amendment rights by failing to provide proper and effective medical treatment

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

consistent with his religious beliefs. Steele's medical records, together with his own allegations, show that Steele received medical treatment for his skin condition. Steele's disagreement with the course of that medical treatment does not constitute deliberate indifference. See Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991). Steele has not addressed the district court's determination that defendants Morris, Shabaaz, Smith, and Valenzuela could not be held liable as supervisory officials. Therefore, these claims are deemed abandoned. See Hughes v. Johnson, 191 F.3d 607, 613 (5th Cir. 1999).

Steele has not shown that the district court's certification was incorrect. The instant appeal is without arguable merit and is thus frivolous. Accordingly, Steele's request for IFP status is denied, and his appeal is dismissed as frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5TH CIR. R. 42.2.

The dismissal of Steele's appeal as frivolous by this court counts as a strike under 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996). Steele previously accumulated two § 1915(g) strikes. See Steele v. Glenn, No. 04-51277 (5th Cir. May 26, 2006) (unpublished) (dismissing appeal as frivolous after district court dismissed complaint for failure to state a claim). Accordingly, Steele is barred from proceeding IFP in any civil action or appeal brought while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. See § 1915(g).

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