

December 14, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-60403
Conference Calendar

SHAUNTELL MAURICE SUMMERALL,

Plaintiff-Appellant,

versus

DR. LORENZO CABE, Doctor, Medical Personnel; DR. CHERIE PETTIT,
Doctor, Medical Personnel; DR. "UNKNOWN" TOUCHSTONE, Doctor,
Medical Personnel; GREGORY JOHNSON; JESSIE J. STREETER; JEFFERY
HUNTER; ANTHONY STANDLEY; JEFFERY CARVER; MORRIS JOHNSON,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 4:04-CV-165

Before KING, Chief Judge, and HIGGINBOTHAM and SMITH, Circuit Judges

PER CURIAM:*

Shauntell Maurice Summerall, Mississippi prisoner # R6322,
has filed an application to proceed in forma pauperis (IFP) on
appeal following the district court's dismissal of his 42 U.S.C.
§ 1983 complaint for failure to state a claim for which relief
could be granted. Summerall is effectively challenging the
district court's certification that he should not be granted IFP

* 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this opinion should not be published and is not precedent except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.

status because his appeal is not taken in good faith. See Baugh v. Taylor, 117 F.3d 197, 202 (5th Cir. 1997); 28 U.S.C. § 1915(a)(3); FED. R. APP. P. 24(a).

Summerall's assertion that he did not receive the order denying him IFP which contained the Baugh certification is not supported by the record, which contains two signed acknowledgments by Summerall that he received the district court's orders dated May 25, 2005, which included the IFP denial and certification.

By failing to direct his motion solely to the district court's reasons for the certification decision, Summerall has effectively abandoned the only issue that is properly before this court. See Baugh, 117 F.3d at 202; Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993). Accordingly, Summerall's request for IFP status is denied, and his appeal is dismissed as frivolous. See Baugh, 117 F.3d at 202 & n.24; 5TH CIR. R. 42.2.

The dismissal of this appeal as frivolous and the district court's dismissal of the complaint for failure to state a claim count as two strikes for purposes of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 388 (5th Cir. 1996); 28 U.S.C. § 1915(e)(2)(B)(i). Summerall is cautioned that if he accumulates three strikes, he will not be permitted to 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).

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IFP DENIED; APPEAL DISMISSED AS FRIVOLOUS; SANCTION WARNING
ISSUED.