

April 17, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-60785
Conference Calendar

ROY LEE FAIRLEY,

Plaintiff-Appellant,

versus

ADRIAN KEYS, Correctional Officer, Mississippi Department of
Corrections K-9; TERRY JOHNSON, Correctional Officer,
Mississippi Department of Corrections K-9; DOUG SMITH,
Correctional Officer, Mississippi Department of Corrections
K-9; MICHAEL McLENDON,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 2:03-CV-228

Before HIGGINBOTHAM, BENAVIDES, and PRADO, Circuit Judges.

PER CURIAM:*

Roy Lee Fairley, Mississippi prisoner # 22518, applies for
leave to proceed in forma pauperis (IFP) to appeal the judgment
for one defendant following a jury trial and judgment as a matter
of law for the remaining defendants in Fairley's 42 U.S.C. § 1983
action. The district court certified that Fairley's appeal was
not taken in good faith, pursuant to 28 U.S.C. § 1915(a)(3).

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this opinion should not be published and is not precedent except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

Fairley also moves for appointment of counsel; his motion is denied.

Fairley lists possible issues for appeal, but he makes no effort to discuss the facts of his case or how any of the law he cites applies to those facts. He has failed to brief any issues for appeal. See Brinkmann v. Dallas County Deputy Sheriff Abner, 813 F.2d 744, 748 (5th Cir. 1987). His appeal is without arguable merit and is frivolous, see Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983), and we deny IFP and dismiss the appeal. See Baugh v. Taylor, 119 F.3d 197, 202 n.24 (5th Cir. 1997); 5TH CIR. R. 42.2.

This court's dismissal of Fairley's appeal counts as a strike for purposes of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996). Fairley previously had an action dismissed in the district court for failure to state a claim. See Fairley v. Keaton, No. 4:03-CV-00271-WAP (N.D. Miss. Mar. 26, 2004). Fairley is warned that if he accumulates three strikes, he will no longer be allowed to proceed IFP in any civil action or appeal filed while he is detained or incarcerated in any facility unless he is under imminent danger of serious physical injury. See § 1915(g).

IFP DENIED; APPOINTMENT OF COUNSEL DENIED; APPEAL DISMISSED;
SANCTION WARNING ISSUED.