

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

\_\_\_\_\_  
No. 13-30753  
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United States Court of Appeals  
Fifth Circuit

**FILED**

April 4, 2014

Lyle W. Cayce  
Clerk

GARY LANDRY,

Plaintiff–Appellant,

versus

KEVIN BENJAMIN; CHADWICK DARBONNE; UNKNOWN MAPLES,  
Captain; M. PIAZZA,

Defendants–Appellees.

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Appeals from the United States District Court  
for the Middle District of Louisiana  
USDC No. 3:12-CV-311  
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Before JOLLY, SMITH, and CLEMENT, Circuit Judges.

PER CURIAM:\*

Gary Landry, Louisiana prisoner # 326223, moves for leave to proceed *in*

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 13-30753

*forma pauperis* (“IFP”) in his appeal of the dismissal, for failure to state a claim, of his 42 U.S.C. § 1983 suit. Landry’s motions to file a supplemental brief and for the appointment of counsel are DENIED.

By moving for IFP status, Landry is challenging the district court’s certification that his appeal is not taken in good faith. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997); FED. R. APP. P. 24(a). Landry’s brief on appeal makes only a conclusional assertion of good faith and does not address the district court’s reasons for its certification decision, which included thorough consideration of his claims by way of adoption of the magistrate judge’s report and recommendation. *See Baugh*, 117 F.3d at 202. Accordingly, Landry’s challenge to the certification decision is deemed abandoned. *See Brinkmann v. Dall. Cnty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987). Landry has not shown that his appeal involves “legal points arguable on their merits (and therefore not frivolous).” *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (internal quotation marks and citation omitted). Therefore, the motion for leave to proceed IFP on appeal is DENIED, and the appeal is DISMISSED as frivolous. *See Baugh*, 117 F.3d at 202 & n.24; 5TH CIR. R. 42.2.

The dismissal of the complaint as frivolous in the district court and the dismissal of the appeal count as strikes pursuant to 28 U.S.C. § 1915(g). *See Adepegba v. Hammons*, 103 F.3d 383, 385-87 (5th Cir. 1996). Landry is cautioned that if he accumulates three § 1915(g) strikes, he will not be able 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* § 1915(g).