

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-60074
Conference Calendar

J.D. GAINES, also known as
JERRY D. GAINES,

Plaintiff-Appellant,

versus

MISSISSIPPI DEPARTMENT OF
CORRECTIONS; JOHN E. ELLIS,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 3:97-CV-601-WS
- - - - -

October 22, 1998

Before POLITZ, Chief Judge, and WIENER and DENNIS, Circuit Judges.

PER CURIAM:*

Jerry D. Gaines, Mississippi prisoner # 33106, appeals the district court's dismissal of his 42 U.S.C. § 1983 civil rights action as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). Because Gaines does not raise any arguments concerning the district court's dismissal of his complaint, he has abandoned the only issue before this court. See Brinkmann v. Dallas County Deputy Sheriff Abner, 813 F.2d 744, 748 (5th Cir. 1987).

Nonetheless, the district court did not abuse its discretion in

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

dismissing Gaines' action for failure to comply with the court's orders to file an amended complaint and for failure to state a claim upon which relief may be granted. See Eason v. Thaler, 14 F.3d 8, 9-10 (5th Cir. 1994); Jacquez v. Procunier, 801 F.2d 789, 793 (5th Cir. 1986). Gaines' appeal is without arguable merit and is thus frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Therefore, Gaines' appeal is DISMISSED. 5th Cir. R. 42.2. Gaines is informed that the dismissal of his complaint as frivolous by the district court, and the dismissal of his appeal as frivolous, each constitute a "strike" under the "three-strike" provision of 28 U.S.C. § 1915(g).

APPEAL DISMISSED; SANCTIONS WARNING ISSUED.