

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 99-60490  
Conference Calendar

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DAVID A. ROBINSON,

Plaintiff-Appellant,

versus

BEAU STEWART; CONO A. CARANNA, II,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Southern District of Mississippi  
USDC No. 1:99-CV-35-GR  
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February 16, 2000

Before EMILIO M. GARZA, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:\*

David A. Robinson, Mississippi inmate #16036, appeals the dismissal of his civil rights complaint for failure to state a claim and for seeking monetary relief from defendants immune from suit. See 28 U.S.C. § 1915(e)(2)(B)(ii), (iii). IT IS ORDERED that Robinson's request for the appointment of counsel is DENIED. See Ulmer v. Chancellor, 691 F.2d 209, 213 (5th Cir. 1982).

Robinson asserts that that his claim, if successful, would not invalidate his conviction, and therefore, his complaint should proceed. His assertion is without merit. A due process

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

challenge to the prosecutor's comments during closing argument, if successful, would invalidate Robinson's conviction. See Ortega v. McCotter, 808 F.2d 406, 408-11 (5th Cir. 1987). The district court did not err in dismissing the complaint. See Heck v. Humphrey, 512 U.S. 477, 486-87 (1994).

Robinson's argument concerning prosecutorial immunity is also without merit. Robinson's allegations of improper comments by the prosecutor would be defeated by prosecutorial immunity. See Boyd v. Biggers, 31 F.3d 279, 285 (5th Cir. 1994).

This appeal is without arguable merit and is therefore frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). The appeal is DISMISSED as frivolous. See 5TH CIR. R. 42.2.

This dismissal is Robinson's third strike pursuant to 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996); see also Robinson v. Stewart, No. 1:99cv35GR (S.D. Miss. July 9, 1999); Robinson v. Eaves, No. 98-cv-168 (S.D. Miss. June 30, 1999). Pursuant to § 1915(g), Robinson is BARRED from proceeding in forma pauperis 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.

APPEAL DISMISSED. MOTION DENIED.