

April 21, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-20683  
Summary Calendar

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DERRICK ANTHONY WALKER,

Plaintiff-Appellant,

versus

DIRECTOR TEXAS DEPARTMENT OF CRIMINAL JUSTICE,  
INSTITUTIONAL DIVISION,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:04-CV-2020  
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Before SMITH, GARZA and PRADO, Circuit Judges.

PER CURIAM:\*

Derrick Anthony Walker, Texas prisoner # 110315, seeks to appeal the district court's dismissal of his 42 U.S.C. § 1983 complaint as frivolous. Walker's notice of appeal was timely only with respect to the district court's denial of Walker's postjudgment motion, which is properly characterized as a motion filed under FED. R. CIV. P. 60(b). See Harcon Barge Co., Inc. v. D & G Boat Rentals, Inc., 784 F.2d 665, 668-69 (5th Cir. 1986) (en banc).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Walker maintains that the defendant violated his constitutional rights by forcing him to work while he was incarcerated. This court has explicitly upheld the Texas prison's practice of requiring inmates to work against the challenge that such a practice amounted to involuntary servitude. Wendt v. Lynaugh, 841 F.2d 619, 620-21 (5th Cir. 1988); see also Murray v. Mississippi Dep't of Corrections, 911 F.2d 1167, 1167-68 (5th Cir. 1990). Consequently, the district court did not abuse its discretion in denying Walker's Rule 60(b) motion. Carimi v. Royal Caribbean Cruise Line, Inc., 959 F.2d 1344, 1345 (5th Cir. 1992)

Walker's appeal is without arguable merit and is frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it should be dismissed. See 5TH CIR. R. 42.2. Walker should be cautioned that the dismissal of this appeal as frivolous counts as a strike under 28 U.S.C. § 1915(g), as does the district court's dismissal of his complaint. See Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996). Walker is cautioned that, if he accumulates three strikes under § 1915(g), he will not be permitted to proceed 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. See § 1915(g).

APPEAL DISMISSED AS FRIVOLOUS; SANCTION WARNING ISSUED.