

June 21, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-30803
Conference Calendar

KENNETH SPRADLEY,

Plaintiff-Appellant,

versus

O. KENT ANDREWS, TOMMY DAVIS, BUCK DUPLECHAIN,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 2:02-CV-1546-PM-APW

Before WIENER, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

Kenneth Spradley (Spradley), Louisiana prisoner # 101526, appeals the district court's summary judgment in favor of the defendants in his 42 U.S.C. § 1983 action claiming that he suffered injuries as a result of excessive force by prison officials. On appeal, Spradley does not address any of the facts or issues asserted by the defendants in the motion for summary judgment. He fails to challenge the decision of the district court in granting the motion.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Although pro se briefs are afforded liberal construction, Haines v. Kerner, 404 U.S. 519, 520 (1972), arguments must be briefed to be preserved. Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993). Because Spradley failed to brief any of the issues raised in the granting of the defendants' motion for summary judgment, he has abandoned any issues before this court. Hughes v. Johnson, 191 F.3d 607, 612-13 (5th Cir. 1999). Spradley's appeal is without arguable merit and, therefore, is DISMISSED as frivolous. See Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983); 5th Cir. R. 42.2.

Spradley previously filed a 42 U.S.C. § 1983 action which was dismissed by the district court as frivolous. Spradley v. Batiste, No. 96-22-B-1 (M.D. La. Jan. 31, 1996). The dismissal of the prior § 1983 action and the dismissal of the instant appeal as frivolous count as two strikes under 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 385-87 (5th Cir. 1996). Spradley is cautioned that once he accumulates three strikes, he will not be able 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 28 U.S.C. § 1915(g).

APPEAL DISMISSED; SANCTION WARNING ISSUED.