

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-21033
Conference Calendar

CLYDE G. FREEMAN,

Plaintiff-Appellant,

versus

TRACEY HARTMAN; JON BEASLEY,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-00-CV-1199

February 13, 2001

Before SMITH, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Clyde G. Freeman, Texas prisoner # 237263, appeals the district court's dismissal of his 42 U.S.C. § 1983 lawsuit as frivolous or for failure to state a claim, pursuant to 28 U.S.C. § 1915(e)(2)(B). He conclusionally asserts that the district court erred in dismissing those claims following a "five minute 'Spears hearing' where the issues were not addressed and where a jury trial ha[d] been demanded in the complaint" and urges that he was not given a chance to present any witnesses or documentary evidence in support of his case, in violation of his due-process

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

rights. However, Freeman does not specify what witnesses or evidence he wished to proffer but was precluded from presenting, and the record belies his claim that he was denied the opportunity to present his case.

Even if his brief is liberally construed, Freeman does not challenge the basis for the district court's ruling, and he has thus abandoned the sole ground for appeal. See Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993). Accordingly, his appeal is without merit and is DISMISSED. See 5th Cir. R. 42.2. Both the district court's dismissal of Freeman's complaint and this court's dismissal of the instant appeal count as "strikes" for purposes of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 385-87 (5th Cir. 1996). Freeman is CAUTIONED that if he accumulates a third "strike" under 28 U.S.C. § 1915(g), 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.

APPEAL DISMISSED; SANCTIONS WARNING ISSUED.