

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 00-50261  
Conference Calendar

---

OSCAR MCBRIDE, JR.,

Plaintiff-Appellant,

versus

TEXAS BOARD OF PARDONS AND PAROLE,

Defendant-Appellee.

-----  
Appeal from the United States District Court  
for the Western District of Texas  
USDC No. A-00-CV-157-JN  
-----

October 17, 2000

Before SMITH, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Oscar McBride, Jr., Texas prisoner #397508, appeals from the dismissal of his hybrid complaint, which raised both 42 U.S.C. § 1983 and habeas claims. The district court dismissed the complaint without prejudice for failure to state a claim under 28 U.S.C. § 1915(e).

McBride fails to address the district court's grounds for dismissal, and he fails to identify any error in the district

---

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

court's analysis. McBride's failure to identify any error in the district court's legal analysis or its application to his lawsuit "is the same as if he had not appealed that judgment." Brinkmann v. Dallas County Deputy Sheriff Abner, 813 F.2d 744, 748 (5th Cir. 1987).

McBride's appeal is without merit and therefore frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983).

Because the appeal is frivolous, it is DISMISSED. See 5TH CIR. R. 42.2. The dismissal of this appeal as frivolous counts as a strike against McBride for purposes of § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996). We caution McBride that once he accumulates three strikes, he may not 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; SANCTION WARNING ISSUED.