

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 00-50675  
Conference Calendar

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ALFRED C. ANGELLE,

Plaintiff-Appellant,

versus

LOUIS E. GIBSON, also known as Doctor Gibson,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. W-99-CV-125  
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April 12, 2001

Before JOLLY, HIGGINBOTHAM, and JONES, Circuit Judges.

PER CURIAM:\*

Alfred C. Angelle, Texas prisoner No. 684294, seeks leave to proceed in forma pauperis (IFP) following a certification pursuant to 28 U.S.C. § 1915(a)(3) that his appeal is taken in bad faith. We note initially that the district court relied in part on evidence outside of the pleadings when dismissing Angelle's complaint as malicious pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). The dismissal thus operated as a grant of the defendant's summary-judgment motion. Washington v. Allstate Ins. Co., 901 F.2d 1281, 1283-84 (5th Cir. 1990).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

The district court provided adequate reasons in support of its determination that Angelle's appeal is not taken in good faith. Angelle has provided no argument challenging the district court's determinations as to the merits of his complaint. Brinkmann v. Dallas County Deputy Sheriff Abner, 813 F.2d 744, 748 (5th Cir. 1987).

Angelle's appeal is without arguable merit and is frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). The dismissal of Angelle's appeal counts as a "strike" for purposes of 28 U.S.C. § 1915(g). Because the district court's dismissal for failure to state a claim acted as a grant of summary judgment, the district court's judgment does not count as a "strike." Angelle is cautioned that once he accumulates three strikes, he will not be able to proceed IFP in any civil action or appeal while he is imprisoned "unless [he] is under imminent danger of serious physical injury." § 1915(g).

IFP DENIED. APPEAL DISMISSED. SANCTION WARNING ISSUED.