

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-60047
Conference Calendar

ANTHONY MARK BERRYHILL,

Plaintiff-Appellant,

versus

RONALD WINDSOR, Attorney at Law;
TERRY L. WOOD; JOHN YOUNG;
JIM POUNDS; FRANK A. RUSSELL,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 1:99-CV-341-P-A

April 11, 2000

Before WIENER, DeMOSS, and PARKER, Circuit Judges

PER CURIAM:*

Anthony Mark Berryhill, Mississippi prisoner # 78551, appeals from the dismissal of his civil rights action filed pursuant to 42 U.S.C. § 1983. On appeal, he asserts that his trial counsel misadvised him by instructing him to plead guilty to the wrong charge and by directing him to admit to some prior convictions for sentence-enhancement purposes. In addition, Berryhill's brief sets forth several claims of error on the part of the trial court.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Berryhill has not briefed the one issue presented for appeal: whether his § 1983 action is barred by Heck v. Humphrey, 512 U.S. 477 (1994). Accordingly, he has waived this issue. See Gann v. Fruehauf Corp., 52 F.3d 1320, 1328 (5th Cir. 1995).

This appeal is frivolous, and we dismiss it as such. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5TH CIR. R. 42.2. The district court's dismissal of Berryhill's complaint as legally frivolous and this court's dismissal of the appeal as frivolous count as two "strikes" for purposes of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 385-87 (5th Cir. 1996). Berryhill is hereby advised that if he accumulates three "strikes" under § 1915(g), he will be barred from proceeding 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). To avoid sanctions, Berryhill is cautioned to review any pending lawsuits and appeals to ensure that they do not raise arguments that are frivolous.

APPEAL DISMISSED; SANCTIONS WARNING ISSUED.