

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 01-40004  
Conference Calendar

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RICARDO SABEDRA,

Plaintiff-Appellant,

versus

GARY L. JOHNSON,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 9:00-CV-283  
- - - - -

April 12, 2001

Before JOLLY, HIGGINBOTHAM, and JONES, Circuit Judges.

PER CURIAM:\*

Ricardo Sabedra, Texas prisoner #395270, appeals from the dismissal, without prejudice, of his suit invoking 42 U.S.C. § 1983. The district court concluded that Sabedra's complaint should be construed as a federal petition for habeas corpus relief and dismissed without prejudice for failure to exhaust state court remedies. Sabedra'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,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

748 (5th Cir. 1987).

Sabedra'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. Our dismissal of this appeal counts as a strike against Sabedra for purposes of 28 U.S.C. § 1915(g). We caution Sabedra 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 28 U.S.C. § 1915(g).

APPEAL DISMISSED; SANCTION WARNING ISSUED.