

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-40374
Conference Calendar

ROGER EUGENE GRESHAM,

Plaintiff-Appellant,

versus

NUECES COUNTY SHERIFF'S DEPARTMENT,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. C-00-CV-426
- - - - -

August 22, 2001

Before KING, Chief Judge, and POLITZ and PARKER, Circuit Judges.

PER CURIAM:*

Roger Eugene Gresham, a federal prisoner (# 29072-077), appeals the district court's order dismissing his 42 U.S.C. § 1983 civil rights and civil RICO, 18 U.S.C. § 1964(c), complaint as frivolous and for failure to state a claim upon which relief may be granted, pursuant to 28 U.S.C. § 1915A(b). Gresham sued the Nueces County (Tex.) Sheriff's Department ("NCSD") based on its failure to obey a federal district court order directing that he be returned to federal prison upon the completion of a state proceeding on a motion to revoke Gresham's probation.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

By failing to make relevant arguments and record citations in his appellate brief, Gresham has effectively abandoned his claim that the NCSA violated his constitutional right of access to the courts. See Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993); FED. R. APP. P. 28(a)(9).

Gresham's civil RICO claim against the NCSA is frivolous because he has not alleged that a "pattern of racketeering activity" occurred nor has he shown that the NCSA, as the named defendant, was separate and distinct from a RICO "enterprise." See Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 481 (1985); Word of Faith World Outreach Center Church, Inc. v. Sawyer, 90 F.3d 118, 122 (5th Cir. 1996); Ashe v. Corley, 992 F.2d 540, 544 (5th Cir. 1993); 18 U.S.C. §§ 1964(c), 1962. The district court did not err in concluding that such claim was frivolous under 28 U.S.C. § 1915A(b). See Ruiz v. United States, 160 F.3d 273, 275 (5th Cir. 1998).

Because Gresham's appeal is without arguable merit, the appeal is DISMISSED as frivolous. 5TH CIR. R. 42.2; see Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). The dismissal of the instant appeal as frivolous and the district court's dismissal of his civil rights complaint under 28 U.S.C. § 1915A(b) each count as a "strike" under the three-strikes provision of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 387 (5th Cir. 1996). Gresham is cautioned 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.