

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-40852
Conference Calendar

DANIEL WALKER,

Plaintiff-Appellant,

versus

JACK SKEEN, JR., District
Attorney, Smith County;
ANDY NAVARRO, Grand Jury
Foreman, Smith County,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:01-CV-217

December 12, 2001

Before HIGGINBOTHAM, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

Daniel Walker, Texas state prisoner # 1031016, is appealing the district court's dismissal of his 42 U.S.C. § 1983 complaint based on the absolute immunity of the district attorney who prosecuted him and the grand jury foreman who signed the indictment against him. A prisoner's in forma pauperis (IFP) civil rights complaint is subject to dismissal if the action is frivolous or fails to state a claim upon which relief may be

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

granted. Black v. Warren, 134 F.3d 732, 733 (5th Cir. 1998); see 28 U.S.C. § 1915(e)(2)(B)(i) & (ii).

It appears that Walker's claim is barred by Heck v. Humphrey, 512 U.S. 477, 486-87 (1994) because he has not alleged that his sentence has been reduced based on a court's recognition that it was illegally enhanced by a reversed prior conviction. However, a district court may address absolute immunity before making a Heck analysis. Boyd v. Biggers, 31 F.3d 279, 284 (5th Cir. 1994).

Walker's claims against the prosecutor and the grand jury foreman were properly dismissed based on absolute immunity because he is challenging acts performed in connection with his indictment and prosecution. Imbler v. Pachtman, 424 U.S. 409, 423, 431 (1976).

This appeal is without arguable merit and thus frivolous. See Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. 5th Cir. R. 42.2. The district court's dismissal of Walker's complaint 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). Walker is CAUTIONED that if he accumulates three strikes under 28 U.S.C. § 1915(g), he will not be able to 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; SANCTIONS WARNING ISSUED.