

April 22, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-11110
Conference Calendar

IRVING ELLIOT, also known as Al Yasa Muhammad,

Plaintiff-Appellant,

versus

NANCY JOWERS; SHEILA WHATLEY; NFN HAMILTON;
NFN MARTIN, Sergeant; NFN SAVAGE, Officer;
NFN SOUTHERN; NFN MCCOY; J.K. PRICE; R. PEREZ,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:01-CV-233

Before DAVIS, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

Proceeding pro se and in forma pauperis, Irving Dean Elliot, Texas prisoner # 384725, appeals the dismissal of his 42 U.S.C. § 1983 suit as frivolous. The sole arguable issue on appeal is whether the district court erred in determining that Elliot failed to demonstrate that he had exhausted his administrative remedies prior to filing his complaint. Elliot fails to address

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

this issue in his brief. Accordingly, it is deemed abandoned. See Brinkmann v. Dallas County Deputy Sheriff Abner, 813 F.2d 744, 748 (5th Cir. 1987). This appeal lacks arguable merit and therefore is DISMISSED as frivolous. See 5TH CIR. R. 42.2. In light of this disposition, all outstanding motions are DENIED.

Elliot has previously had an appeal dismissed as frivolous. See Elliot v. Geerds, No. 01-20179 (5th Cir. July 6, 2001) (unpublished). The district court's dismissal and this court's dismissal of his appeal counted as two "strikes" for purposes of 28 U.S.C. § 1915(g). The dismissal of this appeal and the district court's dismissal each count as a "strike" for purposes of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996). Because Elliot has accumulated more than three "strikes," he may not pursue a civil action or appeal in forma pauperis unless he is "under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

APPEAL DISMISSED. 5TH CIR. R. 42.2. ALL OUTSTANDING MOTIONS DENIED. 28 U.S.C. § 1915(g) SANCTION IMPOSED.