

June 24, 2003

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-10175  
Conference Calendar

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JOSEPH DAVID BRODIN,

Petitioner-Appellant,

versus

L. E. FLEMING, Warden, Federal Medical Center  
Fort Worth, TX; UNITED STATES OF AMERICA,

Respondents-Appellees.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:02-CV-1024-A  
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Before DeMOSS, DENNIS, and PRADO, Circuit Judges.

PER CURIAM:\*

Joseph David Brodin, federal prisoner # 09360-023, appeals the dismissal of his civil rights complaint for failure to comply with the district court's order that he file a specific complaint. Brodin offers no reason on appeal for why he refused to comply with the court's order. The district court did not

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

abuse its discretion in dismissing his complaint under FED. R. CIV. P. 41(b). McCullough v. Lynaugh, 835 F.2d 1126, 1127 (5th Cir. 1988).

Brodin's appeal is without arguable merit and is therefore frivolous. See Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983). Accordingly, his appeal is DISMISSED. See 5TH CIR. R. 42.2.

Brodin is cautioned that the dismissal of this appeal as frivolous counts as a strike for purposes of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 385-87 (5th Cir. 1996). Brodin is also cautioned that if he accumulates three "strikes" under 28 U.S.C. § 1915(g), he will not be able to proceed in forma pauperis (IFP) 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).

DISMISSED as frivolous.