

October 21, 2003

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-40432  
Conference Calendar

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JUAN ANDRES GUERRA,

Plaintiff-Appellant,

versus

ORLANDO PEREZ,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. C-02-CV-540  
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Before KING, Chief Judge, and JOLLY and STEWART, Circuit Judges.

PER CURIAM:\*

Juan Andres Guerra, Texas prisoner # 1016762, appeals the dismissal of his pro se, in forma pauperis ("IFP") 42 U.S.C. § 1983 lawsuit for failure to state a claim upon which relief may be granted.

Guerra's brief provides no cogent argument that the district court erred in dismissing his claims. Although pro se briefs are afforded liberal construction, see Haines v. Kerner, 404 U.S. 519, 520-21 (1972), even pro se litigants must brief arguments in

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

order to preserve them. Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993). Because Guerra does not address the bases for the district court's determination that the complaint failed to state a claim, he has abandoned any challenge to the dismissal on appeal. Accordingly, this appeal is DISMISSED as frivolous. See 28 U.S.C. § 1915(e)(2)(B)(i); 5TH CIR. R. 42.2.

The district court's dismissal and this dismissal each count as one strike for purposes of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996). While this appeal was pending, this court affirmed the dismissal of another 42 U.S.C. § 1983 suit filed by Guerra that also had been dismissed by the district court for failure to state a claim. See Guerra v. Thaler, No. 02-21313 (5th Cir. June 24, 2003) (unpublished). The district court's dismissal in Guerra v. Thaler also counts as one strike for purposes of 28 U.S.C. § 1915(g). See Adepegba, 103 F.3d at 387-88. Guerra now has accumulated three strikes, and 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, THREE-STRIKES BAR IMPOSED.