

February 23, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-50467
Conference Calendar

MARIO ROMO,

Plaintiff-Appellant,

versus

RONNIE EARL, District Attorney; GARY COBB,
Assistant District Attorney, Travis County;
MINDY MCCRAKEN, Assistant District Attorney,
Travis County; STATE OF TEXAS,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:04-CV-154-LY

Before BARKSDALE, GARZA, and STEWART, Circuit Judges.

PER CURIAM:*

Mario Romo, Texas prisoner # 1015586, appeals from the district court's dismissal with prejudice of his complaint filed pursuant to 42 U.S.C. § 1983. The district court declined to construe Romo's complaint as a habeas corpus petition and, to the extent that he sought such relief, the district court dismissed those claims without prejudice.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Romo has filed a motion for leave to file a supplemental brief incorporated in his appellate brief. For the first time in his proposed supplemental brief, Romo seeks to add new parties and to raise new claims. These issues will not be considered for the first time on appeal. See *Leverette v. Louisville Ladder Co.*, 183 F.3d 339, 342 (5th Cir. 1999). Accordingly, his motion to file a supplemental brief is DENIED.

Romo has not challenged in this court the district court's reasons for dismissing his complaint. Accordingly, it is as if Romo had not appealed the judgment. See *Brinkmann v. Dallas County Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987).

Romo's appeal is without arguable merit and is frivolous. See *Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. 5TH CIR. R. 42.2. The district court's dismissal of Romo's complaint as frivolous counts as a strike under 28 U.S.C. § 1915(g), as does the dismissal of this appeal. See *Adepegba v. Hammons*, 103 F.3d 383, 387-88 (5th Cir. 1996). Romo is CAUTIONED that if he accumulates three strikes, he will no longer be allowed 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 AS FRIVOLOUS; SANCTION WARNING ISSUED;
MOTION TO FILE SUPPLEMENTAL BRIEF DENIED.