

FILED

June 21, 2005

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III
Clerk

No. 04-60630
Conference Calendar

ERIC JONES,

Plaintiff-Appellant,

versus

DIANE PARKER, Executrix of the Estate of Barry Parker, deceased,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 4:96-CV-1-PA

Before WIENER, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

Eric Jones, Mississippi prisoner # 45265, has filed a motion for leave to proceed in forma pauperis ("IFP") on appeal from the summary-judgment dismissal of his action under 42 U.S.C. § 1983. The district court denied Jones's motion to appeal IFP and certified that the appeal was not taken in good faith.

By moving to proceed IFP, Jones is challenging the district court's certification. See *Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997). Because the merits of Jones's appeal are

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

"inextricably intertwined" with the district court's certification that the appeal was not taken in good faith, we determine both issues, denying IFP and dismissing the appeal. See id.

Jones argues that the district court failed to provide reasons for its certification. Any deficiency in this regard, however, was cured by the district court's issuance of an amended order setting forth its reasons. Jones was provided with an opportunity to file a supplemental brief following the issuance of the amended order, but he has not done so.

Jones argues, without citation to the record or to authority, that the district court abused its discretion by resolving issues rather than finding issues. He also contends that the district court decided the case on the basis of incorrect facts.

Jones's appeal is without arguable merit and is therefore frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. See 5TH CIR. R. 42.2.

The dismissal of Jones's appeal by this court counts as a strike under 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996). Jones has accumulated at least two additional strikes based on the dismissal of a previous civil rights complaint and appeal as frivolous. See Jones v. Butler, No. 00-60598 (Apr. 12, 2001)(unpublished). Jones has now

accumulated at least three strikes for purposes of 28 U.S.C. § 1915(g). Accordingly, Jones is BARRED from proceeding 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).

IFP MOTION DENIED; APPEAL DISMISSED AS FRIVOLOUS; 28 U.S.C. § 1915(g) BAR IMPOSED.