

April 17, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-10259
Conference Calendar

DONALD DOINES,

Plaintiff-Appellant,

versus

GARY JOHNSON; ET AL.,

Defendants,

MARGARET MCCLEARY; LANCE PORTER; RICHARD ELLIS; WILLIAM
WHITE; CHRISTOPHER ABSHIRE; JANICE BAKER; PHILIP HULSEY;
GLEN D. STOUDEER,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:04-CV-42

Before HIGGINBOTHAM, BENAVIDES, and PRADO, Circuit Judges.

PER CURIAM:*

Donald Doines, Texas prisoner # 1046547, filed a 42 U.S.C. § 1983 civil rights complaint against several officials at his prison facility alleging constitutional violations arising from the use of vulgar language, malicious prosecution of false disciplinary cases, a missed meal, and the denial of prescribed medication. The district court dismissed Doines's complaint with

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

prejudice as frivolous and for failure to state a claim under 28 U.S.C. §§ 1915A, 1915(e)(2), and 42 U.S.C. § 1997e.

Doines argues on appeal that the district court should have conducted a thorough hearing prior to dismissing his claims. He contends that such a hearing would have shown his allegations to be true. The district court, however, did not dismiss any of Doines's claims on the ground that they were untruthful. By failing to address the bases of the district court's dismissal, Doines has effectively waived the only appealable issue.

See Brinkmann v. Dallas County Deputy Sheriff Abner, 813 F.2d 744, 748 (5th Cir. 1987).

Doines's appeal is without arguable merit and is therefore frivolous. See Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983). His appeal is dismissed as frivolous. See 5TH CIR. R. 42.2. The district court's dismissal of Doines's complaint and this court's dismissal of his appeal each count as a strike against Doines for purposes of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996). Doines is cautioned that if he accumulates three strikes pursuant to § 1915(g), he will not be able 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 § 1915(g).

APPEAL DISMISSED; SANCTION WARNING ISSUED.