

FILED

August 16, 2007

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III
Clerk

No. 06-41382
Summary Calendar

ROBERT MARTINEZ

Plaintiff-Appellant

v.

TEXAS DEPARTMENT CORRECTIONS

Defendant-Appellee

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:04-CV-176

Before HIGGINBOTHAM, STEWART, and OWEN, Circuit Judges.

PER CURIAM:*

Robert Martinez, formerly Texas prisoner # 1188230, appeals the district court's dismissal of his 42 U.S.C. § 1983 complaint for lack of prosecution. Martinez had raised a number of claims regarding a prison disciplinary hearing and various conditions of confinement. The district court dismissed without prejudice after Martinez failed to comply with an order to amend his complaint.

Martinez's appellate brief fails to adequately address the district court's basis for dismissing his complaint. Although this court liberally construes pro

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

se briefs, see *Haines v. Kerner*, 404 U.S. 519, 520 (1972), even pro se litigants must brief arguments in order to preserve them. *Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993). Because Martinez has failed to brief the relevant issue for appeal, his appeal is frivolous and is dismissed. See *Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983); 5TH CIR. R. 42.2. Martinez's motion for production of documents also is denied.

Martinez is cautioned that the dismissal of his appeal as frivolous counts as a strike under 28 U.S.C. § 1915(g). See *Adepegba v. Hammons*, 103 F.3d 383, 387-88 (5th Cir. 1996). He is also cautioned that if he accumulates three strikes under § 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).

MOTION FOR PRODUCTION OF DOCUMENTS DENIED; APPEAL DISMISSED; SANCTION WARNING ISSUED.