

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

August 18, 2009

No. 08-30736
Conference Calendar

Charles R. Fulbruge III
Clerk

STEPHAN MOORER

Plaintiff-Appellant

v.

UNITED STATES PENITENTIARY POLLOCK, Executive, Supervisory
& Custodial Staff; FEDERAL CORRECTIONAL INSTITUTION OAKDALE;
S HARTLINE; G MALDONADO; H LAPPIN; H WATTS; F MENNIFEE;
J BELL; K EDENFIELD; CAPTAIN MARQUES; T GARROW; S I A
TOWNSEND; S MORRISON; M MELTON; C JEFFERSON; C ZERR; D CRUZ

Defendants-Appellees

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 1:08-CV-365

Before HIGGINBOTHAM, DAVIS, and CLEMENT, Circuit Judges.

PER CURIAM:*

Stephan Moorer, federal prisoner # 03502-007, has moved for leave to proceed in forma pauperis (IFP) on appeal from the dismissal of his original *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971), complaint as frivolous and his amended complaint for lack of proper venue. By moving for

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

leave to proceed IFP, Moorner is challenging the district court's certification that the appeal is not taken in good faith. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997). Moorner fails to address the district court's finding that his original complaint was precluded by *Sandin v. Conner*, 515 U.S. 472 (1995), and that his amended complaint was filed in the wrong venue. Moorner has thus abandoned any challenge to the district court's dismissal. *See Brinkmann v. Dallas County Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987).

Moorner has not demonstrated that he will raise a nonfrivolous issue on appeal. *See Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983). Accordingly, Moorner's motion to proceed IFP is denied. *See Baugh*, 117 F.3d at 202 n.24. Because his appeal is frivolous, *see Howard*, 707 F.2d at 219-20, the appeal is dismissed. *See* 5TH CIR. R. 42.2.

The district court's dismissal of Moorner's original complaint as frivolous and our dismissal of this appeal as frivolous both count as strikes for purposes of 28 U.S.C. § 1915(g). *See Adepegba v. Hammons*, 103 F.3d 383, 387-88 (5th Cir. 1996). Moorner is warned that, if he accumulates three strikes pursuant to § 1915(g), he may not proceed IFP 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." § 1915(g).

MOTION DENIED; APPEAL DISMISSED; SANCTION WARNING ISSUED.