

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

United States Court of Appeals
Fifth Circuit

FILED

March 5, 2010

No. 09-30736
Summary Calendar

Charles R. Fulbruge III
Clerk

PETER ROY ALFRED, JR.,

Plaintiff-Appellant

v.

WINN CORRECTIONAL CENTER; TIM WILKINSON; ANGIE MARTIN; TIM MORGAN; LAURA HOWARD; ALFONZO PACHECO; PAT THOMAS; L COLEMAN; M GASKILL; UNKNOWN INSURANCE CO; CORRECTIONS CORPORATION OF AMERICA,

Defendants-Appellees

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 1:07-CV-1785

Before KING, STEWART, and HAYNES, Circuit Judges.

PER CURIAM:*

Peter Roy Alfred, Jr., Louisiana prisoner # 315023, moves for leave to proceed in forma pauperis (IFP) on appeal following the district court's denial of his IFP motion and certification that his appeal was not taken in good faith. He seeks to appeal the dismissal of his 42 U.S.C. § 1983 suit alleging that the defendants, inter alia, violated his Eighth Amendment rights by denying him a

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

continuous positive airway pressure machine (CPAP). Alfred's IFP motion challenging the certification decision "must be directed solely to the trial court's reasons for the certification decision." *Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997). Although this court previously imposed a 28 U.S.C. § 1915(g) bar upon Alfred in rejecting a similar case against different defendants, *see Alfred v. Forcht Wade Corr. Ctr.*, 2009 WL 3786260, at *1-2 (5th Cir. Nov. 12, 2009), the instant appeal was filed before the bar was imposed.

Because Alfred has not challenged the district court's dismissal of his claims against the Corrections Corporation of America, Winn Correctional Center, Tim Wilkinson, Angie Martin, and Tim Morgan, he has abandoned his claims against these defendants. *See Brinkmann v. Dallas County Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987). Further, he challenges only the district court's dismissal of his Eighth Amendment claims against the remaining defendants; accordingly, he has abandoned all but those Eighth Amendment claims. *See Brinkmann*, 813 F.2d at 748.

The record shows that Alfred received medical attention for his sleep apnea following his transfer to Winn Correctional Center and that the sleep apnea never posed a serious risk to Alfred's health. *See Norton v. Dimazana*, 122 F.3d 286, 291-92 (5th Cir. 1997). Alfred has been receiving CPAP treatments since May 2008.

Alfred's appeal is without arguable merit and is frivolous. *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). He continues to be barred from proceeding 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. *See* § 1915(g). He should review any pending appeals and withdraw any that are frivolous.

Alfred's motion to proceed IFP is DENIED, and his appeal is DISMISSED as frivolous pursuant to 5TH CIR. R. 42.2.