

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

United States Court of Appeals  
Fifth Circuit

**FILED**

May 1, 2012

Lyle W. Cayce  
Clerk

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No. 11-40859  
Summary Calendar

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RALPH B. SMITH,

Plaintiff-Appellant

v.

WARDEN DAWN GROUNDS; JEFF CALFEE, also known as Unidentified Calfee, also known as FNU Calfee; MAJOR RODGER MCDONALD; LIEUTENANT MICHAEL BRANTLEY; SARGEANT MRS. MOORE; NURSE CLAIRE RUSSELL; DR. REGINALDO STANLEY,

Defendants-Appellees

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 5:10-CV-237

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Before DENNIS, CLEMENT, and OWEN, Circuit Judges.

PER CURIAM:\*

Ralph B. Smith, Texas prisoner # 855314, appeals the district court's dismissal of his civil action under 42 U.S.C. § 1983 and the Americans with Disabilities Act, 42 U.S.C. §§ 12101-12213, as frivolous and for failure to state a claim upon which relief may be granted. Smith argues that the district court violated his due process rights by ignoring evidence showing that he was entitled

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

## No. 11-40859

to relief. He briefly argues the facts of his claims, and he states that the record speaks for itself.

The district court dismissed Smith's complaint because it found that his claims for monetary damages and declaratory relief were barred by the Eleventh Amendment and his claim for injunctive relief was moot. By failing to discuss or even mention the district court's rationales for dismissing his complaint, Smith has waived any challenge to the dismissal of his complaint. *See Brinkmann v. Dallas County Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987).

Smith's appeal is without arguable merit and is frivolous. *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Because the appeal is frivolous, it is dismissed. *See* 5TH CIR. R. 42.2. Smith's motion for appointment of counsel is denied. *See Santana v. Chandler*, 961 F.2d 514, 515-16 (5th Cir. 1992).

Both this court's dismissal of the instant appeal and the district court's dismissal of Smith's complaint count as strikes for purposes of 28 U.S.C. § 1915(g). *See Adepegba v. Hammons*, 103 F.3d 383, 388 (5th Cir. 1996). During the pendency of this appeal, this court imposed the § 1915(g) bar against Smith. *See Smith v. Hullum*, 442 F. App'x 972, 972 (5th Cir. 2011). Smith is admonished that 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). Smith is also warned that filing further frivolous matters will subject him to sanctions in addition to those that are already in place. He is instructed to review any pending matters and move to dismiss any that are frivolous.

APPEAL DISMISSED; MOTION FOR APPOINTMENT OF COUNSEL DENIED; 28 U.S.C. § 1915(g) BAR REMAINS IN EFFECT; SANCTION WARNING ISSUED.