

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

United States Court of Appeals  
Fifth Circuit

**FILED**

October 2, 2012

Lyle W. Cayce  
Clerk

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No. 11-50386  
Summary Calendar

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CRUZ GONZALEZ, JR.,

Plaintiff-Appellant

v.

WARDEN MIKE SUTTON; NFN FOLEY; CAPTAIN WAYNE DAVIS;  
ASSISTANT WARDEN BENNY BOYKIN; NFN DORNAN,

Defendants-Appellees

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 6:09-CV-146

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Before STEWART, Chief Judge, and OWEN, and GRAVES, Circuit Judges.

PER CURIAM:\*

Cruz Gonzalez, Jr., Texas prisoner # 1503245, appeals the district court's summary judgment dismissal of his 42 U.S.C. § 1983 complaint as frivolous under 28 U.S.C. § 1915A(b)(1). In dismissing the complaint, the district court found that the undisputed evidence established that Gonzalez had failed to exhaust his administrative remedies.

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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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 11-50386

In his brief, Gonzalez renews many of the allegations raised during the proceedings below; however, he never adequately briefs a challenge to the district court's conclusion that the evidence showed no dispute about his failure to exhaust his administrative remedies. Gonzalez has abandoned the only basis for his appeal by failing to brief a challenge to the district court's reason for dismissal. *See Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993); *Brinkmann v. Dallas Cnty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987). By failing to provide adequate briefing, he has likewise abandoned his claim that the magistrate judge and district court failed to rule on his unspecified motions and petitions. *See Yohey*, 985 F.2d at 224-25. Accordingly, Gonzalez's appeal is dismissed as frivolous. *See* 5TH CIR. R. 42.2.

The district court's dismissal of Gonzalez's § 1983 lawsuit as frivolous pursuant to § 1915A(b)(1) 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, 388 (5th Cir. 1996). Gonzalez 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).

APPEAL DISMISSED; SANCTION WARNING ISSUED.