

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

No. 14-31351
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 29, 2015

Lyle W. Cayce
Clerk

FRANK L. MCCALL, JR.,

Plaintiff-Appellant

v.

DONALD W. WASHINGTON, United States Attorney; CITY OF
LAFAYETTE,

Defendants-Appellees

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 6:07-CV-240

Before DAVIS, JONES, and GRAVES, Circuit Judges.

PER CURIAM:*

Frank L. McCall, Jr., Louisiana prisoner # 130746, appeals the order of the district court denying him authorization to file a motion to reopen the instant *Bivens*¹ action, which motion McCall based on newly discovered evidence. The district court found that McCall's motion raised the same

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

¹ *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

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frivolous argument concerning his criminal defense attorney that he had raised in his *Bivens* complaint and in numerous other cases, and it therefore enforced its prior sanctions order requiring him to obtain judicial pre-approval for all pro se filings.

McCall's opening brief has not assigned error to or briefed the propriety of the district court's decision to enforce its prior sanctions order. As such, that issue is waived. *See Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993); *see also Brinkmann v. Dallas Cnty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987). To the extent that McCall addresses the merits of his newly-discovered-evidence claim and alleges in a conclusional fashion that he is in imminent danger of physical injury, he does so for the first time in his reply brief, and issues raised for the first time in a reply brief are also waived. *See Warren v. Chesapeake Exploration, L.L.C.*, 759 F.3d 413, 420 (5th Cir. 2014). McCall's appeal is without arguable merit and is therefore dismissed as frivolous. *See 5TH CIR. R. 42.2; Williams v. Phillips Petroleum Co.*, 23 F.3d 930, 941 (5th Cir. 1994).

McCall has already been sanctioned pursuant to 28 U.S.C. § 1915(g) on account of his frivolous filings, and, therefore, he may not bring a civil action or appeal proceeding in forma pauperis while incarcerated unless he is under imminent danger of serious physical injury. McCall is cautioned that future frivolous appeals or repetitive filings will result in the imposition of sanctions, including dismissal, monetary sanctions, and restrictions on his ability to file pleadings in this court or any court subject to this court's jurisdiction.

APPEAL DISMISSED; SANCTION WARNING ISSUED.