

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

No. 18-60058

United States Court of Appeals
Fifth Circuit

FILED

January 29, 2019

Lyle W. Cayce
Clerk

DOUGLAS TAYLOR,

Plaintiff-Appellant

v.

OFFICER TERRIZINA JONES,

Defendant-Appellee

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 5:17-CV-47

Before DENNIS, CLEMENT, and COSTA, Circuit Judges.

PER CURIAM:*

Douglas Taylor, Mississippi prisoner # T5273, moves for leave to proceed in forma pauperis (IFP) on appeal. He filed a 42 U.S.C. § 1983 complaint against Officer Terrizina Jones alleging that she failed to protect him from being injured by other inmates incarcerated at the Wilkinson County Correctional Facility (WCCF). The district court granted Jones's motion for summary judgment and dismissed without prejudice the complaint based on

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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Taylor's failure to exhaust his administrative remedies. The district court also certified that Taylor's appeal was not taken in good faith.

By moving to proceed IFP, Taylor is challenging the district court's good-faith certification. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997). Our inquiry into an appellant's good faith "is limited to whether the appeal involves legal points arguable on their merits (and therefore not frivolous)." *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (internal quotation marks and citations omitted). We may dismiss the appeal if it is frivolous. *See Baugh*, 117 F.3d at 202 n.24.

In his motion, Taylor has failed to challenge the district court's dismissal of his complaint based on his failure to exhaust his administrative remedies prior to filing the instant complaint. Thus, he has abandoned the dispositive issue on appeal. *See Brinkmann v. Dallas County Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987); *see also Jones v. Bock*, 549 U.S. 199, 211 (2007); *Gonzalez v. Seal*, 702 F.3d 785, 787-88 (5th Cir. 2012). Further, the documents attached to Taylor's motion do not show that he completed the exhaustion process prior to filing this § 1983 complaint. *See Gonzalez*, 702 F.3d at 787-88.

Taylor has not shown that a genuine factual dispute exists as to his failure to exhaust his administrative remedies prior to filing this suit and, thus, Officer Jones was entitled to summary judgment. *See Jones*, 549 U.S. at 211; FED. R. CIV. P. 56(a). Because Taylor has failed to show that his appeal has any arguable merit, it is frivolous. *See Howard*, 707 F.2d at 220. Taylor's motion for leave to proceed IFP on appeal is denied, and his appeal is dismissed as frivolous. *See Baugh*, 117 F.3d at 202 n.24; 5TH CIR. R. 42.2.

The dismissal of Taylor's appeal counts as a strike for purposes of 28 U.S.C. § 1915(g). *See Adepegba v. Hammons*, 103 F.3d 383, 387-88 (5th Cir. 1996). Taylor is cautioned that if he accumulates three strikes, he will not be

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able to 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. *See* § 1915(g).

MOTION DENIED; APPEAL DISMISSED AS FRIVOLOUS;
SANCTION WARNING ISSUED.