

United States Court of Appeals
for the Fifth Circuit

No. 22-40449

United States Court of Appeals
Fifth Circuit

FILED

May 22, 2023

Lyle W. Cayce
Clerk

CORNEL JACKIE DRUMMER,

Plaintiff—Appellant,

versus

KEN MAYNARD, III; AARON MOHANTLY; DR. HAGUE, *Medical Doctor*; UNIVERSITY OF TEXAS MEDICAL BRANCH MEDICAL STAFF, *George Beto Unit*,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 3:19-CV-387

Before ELROD, GRAVES, and HO, *Circuit Judges*.

PER CURIAM:*

Cornel Jackie Drummer, Texas prisoner # 00619316, appeals from the dismissal of his civil rights action as frivolous and for failure to state a claim on which relief may be granted. Drummer filed the action pursuant to 42 U.S.C. § 1983 to complain of alleged deliberate indifference to his serious

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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medical needs. Currently pending before this court are several motions filed by Drummer.

Because Drummer has not shown exceptional circumstances, his motion for the appointment of counsel is DENIED. *See Ulmer v. Chancellor*, 691 F.2d 209, 212-13 (5th Cir. 1982). Drummer recently paid the appellate filing fee, and therefore his motion to proceed in forma pauperis (IFP) on appeal is DENIED as moot. Drummer's two motions for judicial notice are also DENIED.

An appeal should be dismissed upon the hearing of any interlocutory motion where "it appears to the court that the appeal is frivolous and entirely without merit." 5TH CIR. R. 42.2. Our thorough examination of Drummer's brief and the record reveals no nonfrivolous issue. The brief raises only one concrete argument. Contrary to Drummer's contention, the district court did not err by dismissing his civil action sua sponte without ordering a response from the defendants. *See Green v. McKaskle*, 788 F.2d 1116, 1119 (5th Cir. 1986); 28 U.S.C. § 1915(e)(2)(B)(ii). Because Drummer's appeal is frivolous and without any arguable merit, it is DISMISSED. *See* 5TH CIR. R. 42.2.

The district court's dismissal counts as one strike under § 1915(g), and Drummer incurs an additional strike for this frivolous appeal. *See Adepegba v. Hammons*, 103 F.3d 383, 388 (5th Cir. 1996), *abrogated in part on other grounds by Coleman v. Tollefson*, 575 U.S. 532, 537 (2015). Drummer is WARNED that if he accumulates three strikes, he will no longer be allowed to proceed in forma pauperis in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is under imminent danger of serious bodily injury. *See* § 1915(g).