

United States Court of Appeals
for the Fifth Circuit

No. 23-40481

United States Court of Appeals
Fifth Circuit

FILED

February 8, 2024

Lyle W. Cayce
Clerk

FREDERICK HERROD,

Plaintiff—Appellant,

versus

THE 79TH MEMBERS OF CONGRESS, *in official capacity,*

Defendant—Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 5:23-CV-16

Before CLEMENT, ENGELHARDT, and RAMIREZ, *Circuit Judges.*

PER CURIAM:*

Frederick Herrod, former Texas prisoner #01006908 and current federal prisoner # 15525-010, moves for leave to proceed in forma pauperis (IFP) in this appeal from the dismissal of his civil complaint as frivolous and for failure to state a claim for relief. The motion is a challenge to the district court's certification that the appeal is not taken in good faith. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997).

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

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The district court dismissed Herrod's complaint on the grounds that his claims against the defendants were barred by Congressional immunity as set forth in the Speech and Debate Clause and that it otherwise lacked authority to grant the relief sought or order the defendants to grant the relief sought. Herrod fails to address the district court's reasons for the dismissal of his complaint as frivolous and for failure to state a claim. Pro se briefs are afforded liberal construction. *See Yohey v. Collins*, 985 F.2d 222, 225 (5th Cir. 1993). Nevertheless, when an appellant fails to identify any error in the district court's analysis, it is the same as if the appellant had not appealed the decision. *Brinkmann v. Dallas Cnty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987).

Because Herrod has failed to challenge any factual or legal aspect of the district court's disposition of his claims or the certification that his appeal is not taken in good faith, he has abandoned the critical issue of his appeal. *See id.* Thus, the appeal lacks arguable merit. *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Accordingly, the motion for leave to proceed IFP is DENIED, and the appeal is DISMISSED as frivolous. *See Baugh*, 117 F.3d at 202 n.24; 5TH CIR. R. 42.2.

The district court's dismissal of Herrod's complaint as frivolous and for failure to state a claim and the dismissal of this appeal as frivolous each count as strikes under 28 U.S.C. § 1915(g). *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). Herrod is WARNED that if he accumulates three strikes, he will not be permitted to proceed IFP in any civil action or appeal filed while incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. *See* § 1915(g).