

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-60305
Conference Calendar

MILTON LEON SIMPSON, ET AL

Plaintiffs,

MILTON LEON SIMPSON; CHARLES TORNS, JR.;
LONNIE LONDON KENNEDY,

Plaintiffs-Appellants,

versus

KIRK FORDICE; MISSISSIPPI LEGISLATURE;
MISSISSIPPI JUDICIARY; MISSISSIPPI
EXECUTIVE; MISSISSIPPI DEPARTMENT OF
CORRECTIONS,

Defendants-Appellees.

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Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 4:95-CV-398-B-A
- - - - -

June 17, 1998

Before DAVIS, PARKER, and DENNIS, Circuit Judges.

PER CURIAM:*

Mississippi prisoners Milton Leon Simpson, #A84045; Walter
Coleman, Jr., #37410; Charles Torns, Jr., #85825; and Lonnie
London Kennedy, #63279; appealed the dismissal of their civil

* 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that this opinion should not be published and is not precedent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.

rights suit as frivolous. Coleman has since withdrawn from the complaint. Because Torns and Kennedy failed to comply with the district court's order with respect to their in forma pauperis applications, their appeals are DISMISSED for failure to prosecute. See 5th Cir. R. 42.3.

Simpson contends that the Mississippi Habitual Offender Statutes, under which he is presently incarcerated, are unconstitutional. Claims that directly or indirectly challenge the constitutionality of the state sentencing decision are not cognizable under § 1983 unless the sentence "has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254." Heck v. Humphrey, 512 U.S. 477, 486-87 (1994); Serio v. Members of La. State Bd. of Pardons, 821 F.2d 1112, 1117 (5th Cir. 1987). Because Simpson is seeking a court order that would reduce the length of his sentence, his sole federal remedy is a petition for writ of habeas corpus. Preiser v. Rodriguez, 411 U.S. 475, 500 (1973).

This appeal is without arguable merit and, thus, frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. 5th Cir. R. 42.2.

Simpson's motion for appointment of counsel is DENIED. Ulmer v. Chancellor, 691 F.2d 209, 212 (5th Cir. 1982).

We caution Simpson that any additional frivolous appeals filed by him will invite the imposition of sanctions. To avoid sanctions, Simpson is further cautioned to review any pending appeals to ensure that the appeals do not raise arguments that are frivolous.

APPEAL DISMISSED. MOTION DENIED. SANCTION WARNING ISSUED.