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

No. 99-10186 Conference Calendar

JOHNNY RAY VALCHAR,

Plaintiff-Appellant,

versus

PER CURIAM:\*

WILLIAM SWART, M.D.; EMANUEL BRUCOE, M.D.; P. MAXEY, R.N.; V. BURNES, L.V.N.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Texas USDC No. 2:98-CV-142

August 24, 1999

Before KING, Chief Judge, and DAVIS and SMITH, Circuit Judges.

Johnny Ray Valchar, Texas prisoner # 744014, filed a 42 U.S.C. § 1983 complaint against William Swart, M.D., a physician employed at the Dalhart Unit of the Texas Department of Criminal Justice, Institutional Division. Valchar contends that Swart was deliberately indifferent to his serious medical needs because Swart failed to promptly diagnose and treat his ruptured appendix.

Valchar's complaint alleges at most that Swart's actions

 $<sup>^{*}</sup>$  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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

constituted negligence or malpractice, not deliberate indifference to his serious medical needs. A case of mere negligence, neglect, or medical malpractice does not give rise to a § 1983 cause of action. <u>Varnado v. Lynaugh</u>, 920 F.2d 320, 321 (5th Cir. 1991).

Also named as defendants in Valchar's § 1983 complaint were medical personnel Emanuel Brucoe, M.D., P. Maxey, R.N., and V. Burnes, L.V.N. Valchar does not argue in his brief on appeal that the district court erred in dismissing his claims against these individuals; therefore, these claims are abandoned. See Yohey v. Collins, 985 F.2d 222, 225 (5th Cir. 1993).

The district court did not err or abuse its discretion in dismissing Valchar's complaint pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) and (ii). Valchar's appeal is without arguable merit and is therefore frivolous. See Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983). It is DISMISSED. See 5th Cir. R. 42.2.

The district court's dismissal of the present case and our dismissal of this appeal count as two strikes against Valchar for purposes of 28 U.S.C. § 1915(g). We caution Valchar that once he accumulates three strikes, he may not 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 physical injury. See 28 U.S.C. § 1915(g). Valchar should review any pending appeals to ensure that they do not raise frivolous arguments.

APPEAL DISMISSED; SANCTION WARNING ISSUED.