

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 99-11394  
Conference Calendar

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ROQUE T. ARANDA,

Plaintiff-Appellant,

versus

JEANNE MILLSAPS, Clerk,  
San Joaquin Superior Court;  
MICHAEL PLATT, Judge,  
San Joaquin Superior Court;  
SAN JOAQUIN COUNTY,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 5:99-CV-333  
- - - - -

August 29, 2000

Before KING, Chief Judge, and POLITZ and WIENER, Circuit Judges.

PER CURIAM:\*

Roque T. Aranda, Texas prisoner #805045, appeals from the dismissal, without prejudice, of his suit invoking 42 U.S.C. § 1983. The district court concluded that "all of [Aranda's] claims in the instant civil rights action arose out of or relate to his conviction and should properly be raised in a habeas action." Aranda's failure to identify any error in the district court's legal analysis or its application to his lawsuit "is the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

same as if he had not appealed that judgment." Brinkmann v. Dallas County Deputy Sheriff Abner, 813 F.2d 744, 748 (5th Cir. 1987).

Aranda's appeal is without merit and therefore frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. See 5TH CIR. R. 42.2. Our dismissal of this appeal counts as a strike against Aranda for purposes of 28 U.S.C. § 1915(g). We caution Aranda 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 § 1915(g).

APPEAL DISMISSED; SANCTION WARNING ISSUED.