

February 13, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-60959
Conference Calendar

KENNETH GANDY,

Plaintiff-Appellant,

versus

JIFFY FULFILLMENT, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 4:05-CV-99

Before BARKSDALE, GARZA, and CLEMENT, Circuit Judges.

PER CURIAM:*

Kenneth Gandy, Mississippi prisoner # 94933, appeals from the district court's judgment dismissing his 42 U.S.C. § 1983 complaint for failure to state a claim. The district court did not err by dismissing Gandy's complaint; Gandy may not proceed under § 1983 against an entity that is not acting under color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988).

The dismissal of this appeal and the district court's dismissal of Gandy's complaint for failure to state a claim count as strikes under the Prison Litigation Reform Act. Adepegba v.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Hammons, 103 F.3d 383, 387 (5th Cir. 1996). Gandy already has two countable strikes in the district court. See Gandy v. Paper Wings, No. 4:05-CV-00101-TSL-AGN (S.D. Miss. July 8, 2005); Gandy v. Pierce, No. 2:05-CV-00111-KS-JMR (S.D. Miss. May 31, 2005). Because Gandy has accumulated at least three strikes under 28 U.S.C. § 1915(g), he is barred from proceeding 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. § 1915(g). Gandy is warned that additional sanctions may be imposed if he does not withdraw any pending appeals that are frivolous.

APPEAL DISMISSED; 28 U.S.C. § 1915 BAR IMPOSED; SANCTIONS WARNING IMPOSED.