

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-50216
Conference Calendar

EARL HENRY SHELTON, JR.,

Plaintiff-Appellant,

versus

AL SCHORRE; JOHN G. HYDE, Judge;
CHRISTOPHER MCCORMACK,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. MO-99-CV-82

August 21, 2002

Before HIGGINBOTHAM, DAVIS, and PARKER, Circuit Judges.

PER CURIAM:*

Earl Henry Shelton, Jr., Texas prisoner # 629604, appeals from the district court's dismissal of his civil rights complaint under 42 U.S.C. § 1983 as frivolous and for failure to state a claim. In his appellate brief, Shelton does not argue that the district court erred in its determination that his claims challenge his conviction and are subject to dismissal under Heck v. Humphrey, 512 U.S. 477 (1994), or are barred by prosecutorial,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

judicial, and absolute immunity. Failure of an appellant to identify any error in the district court's analysis or application to the facts of the case is the same as if the appellant had not appealed that judgment. Brinkmann v. Dallas County Deputy Sheriff Abner, 813 F.2d 744, 748 (5th Cir. 1987). Because Shelton does not address the basis of the district court's dismissal, he has abandoned the only issue on appeal before this court.

This appeal is without arguable merit and is 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.

The district court's dismissal of Shelton's 42 U.S.C. § 1983 complaint and the dismissal of the appeal as frivolous count as two "strikes" under the three-strikes provision of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996). Shelton is CAUTIONED that if he accumulates a third "strike" under 28 U.S.C. § 1915(g), he will not be able to 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).

APPEAL DISMISSED, SANCTIONS WARNING ISSUED.