

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

August 31, 2021

Lyle W. Cayce
Clerk

No. 20-30684

GLENN DAMOND,

Plaintiff—Appellant,

versus

STATE OF LOUISIANA; JANICE MARTIN; MICHELLE R.
SHELTON; THOMAS ESKOLA; WILL MITCHELL; SID J.
GAUTREAUX, III; LOUISIANA STATE POLICE DEPARTMENT;
DIVISION OF PROBATION AND PAROLE; DEPARTMENT OF
PROBATION AND PAROLE; DEPARTMENT OF PUBLIC SAFETY AND
CORRECTIONS; CITY OF BATON ROUGE; CITY OF BATON ROUGE
POLICE DEPARTMENT,

Defendants—Appellees.

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:20-CV-437

Before STEWART, HAYNES, and HO, *Circuit Judges.*

PER CURIAM:*

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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Glenn Damond, Louisiana prisoner #s 1200123529 & 394537, requests leave to proceed in forma pauperis (IFP) on appeal of the district court's dismissal with prejudice of his pro se 42 U.S.C. § 1983 complaint for failure to state a claim and its denial of supplemental jurisdiction over his state tort law claims. *See* 28 U.S.C. § 1915(e)(2)(B)(ii); 28 U.S.C. § 1915A(b)(1). By moving to proceed IFP in this court, Damond challenges the district court's certification that his appeal is not taken in good faith. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997). To proceed IFP, Damond must demonstrate financial eligibility and a nonfrivolous issue for appeal. *See Carson v. Polley*, 689 F.2d 562, 586 (5th Cir. 1982).

As an initial matter, Damond's motion largely fails to mention the district court's numerous reasons for dismissing his civil rights case. Therefore, Damond has abandoned any challenge to the district court's dismissal for failure to state a claim. *See Brinkmann v. Dallas Cnty. Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987); *Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1983).

In his sole argument on appeal, Damond contends that the district court abused its discretion by denying him leave to amend his complaint. He argues that the district court dismissed his "livable" claims without allowing him to amend his complaint to name the correct parties. Damond does not explain, nor is it apparent, how the amended complaint would have affected the district court's unchallenged conclusion that he failed to state a claim. Thus, amendment would be futile, and the district court did not abuse its discretion by dismissing the case without allowing him to amend his complaint. *See Avatar Expl., Inc. v. Chevron, U.S.A., Inc.*, 933 F.2d 314, 320-21 (5th Cir. 1991).

Because Damond's appeal does not involve "legal points arguable on their merits," *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (internal

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quotation marks and citation omitted), Damond's motion to proceed IFP is denied and the appeal is dismissed as frivolous. *See Baugh*, 117 F.3d at 202 n.24; 5TH CIR. R. 42.2. The dismissal of this appeal as frivolous and the district court's dismissal of Damond's § 1983 complaint for failure to state a claim count as two strikes under 28 U.S.C. § 1915(g). *See Adepegba v. Hammons*, 103 F.3d 383, 388 (5th Cir. 1996), *abrogated in part on other grounds by Coleman v. Tollefson*, 575 U.S. 532, 536-37 (2015). Damond is warned that once he accumulates three strikes, he may not proceed IFP 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).

IFP MOTION DENIED; APPEAL DISMISSED;
SANCTION WARNING ISSUED.