

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

March 29, 2022

Lyle W. Cayce
Clerk

No. 21-10762

RICHARD LOUIS BUTLER, JR.,

Plaintiff—Appellant,

versus

E. HOLMES, *Assistant Warden*; N. DAVIS, *CMI*; CAPTAIN REITSMA;
MRS. KLINE; JAMES V. ALLRED UNIT,

Defendants—Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 7:18-CV-161

Before JONES, DUNCAN, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Richard Louis Butler, Jr., Texas prisoner # 2123250, filed a 42 U.S.C. § 1983 action against various defendants, challenging the conditions of his confinement at the Allred Unit. Following initial screening, the district court dismissed Butler's complaint pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii)

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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because he failed to state a claim upon which relief could be granted. Butler has now filed a motion for authorization to proceed in forma pauperis (IFP) on appeal to challenge this ruling. By moving in this court to proceed IFP, he is challenging the district court's certification that any appeal would not be taken in good faith because, for the reasons relied upon in the order of dismissal, Butler will not present a nonfrivolous appellate issue. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997).

Before this court, Butler argues that he is financially eligible to proceed IFP, and he makes no challenge to the district court's conclusion that he failed to state a claim for relief. His failure to identify any error in the district court's analysis constitutes an abandonment of such claims. *See Brinkmann v. Dallas Cnty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987). The appeal is without arguable merit and is thus frivolous. *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Because the appeal is frivolous, it is dismissed. *See 5TH CIR. R. 42.2.*

The district court's dismissal of the complaint for failure to state a claim and the dismissal as frivolous of this appeal each count as a strike under § 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, 537 (2015). Butler is warned that if he accumulates three strikes, he will no longer be allowed to 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 AS FRIVOLOUS; SANCTION WARNING ISSUED.