

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

April 4, 2022

Lyle W. Cayce
Clerk

No. 21-50296

STEVE A. CHERRY,

Plaintiff—Appellant,

versus

MAYRA CHAVARRIA; VERONICA SANCHEZ; GEO GROUP,
INCORPORATED; BERTHA VILLANUEVA, *Manager Health Services*;
ALBERT BANDA, *Administrator Health Services*,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:19-CV-51

Before SOUTHWICK, GRAVES, and COSTA, *Circuit Judges*.

PER CURIAM:*

Steve A. Cherry, Idaho prisoner # 53316, filed a 42 U.S.C. § 1983 action against various defendants at the Eagle Pass, Texas, Correctional Facility, where he was temporarily housed, asserting that they had been

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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deliberately indifferent to his serious medical needs. Following initial screening, the district court dismissed his complaint because he failed to state a claim upon which relief could be granted and denied him leave to proceed in forma pauperis (IFP) on appeal. Cherry now moves this court for leave to proceed IFP on appeal. By such motion, he challenges 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, he will not present a nonfrivolous appellate issue. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997).

Before this court, Cherry argues that he is financially eligible to proceed IFP, and he conclusionally states that he will raise a meritorious issue for appeal by renewing his claims for deliberate indifference. However, he does not meaningfully brief any argument challenging the district court's reasons for concluding 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, and the motion for leave to proceed IFP on appeal is DENIED. *See Baugh*, 117 F.3d at 202; 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 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, 537 (2015). Cherry 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

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imminent danger of serious physical injury. *See* § 1915(g). His motion for the appointment of counsel is DENIED.