

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

February 27, 2023

Lyle W. Cayce
Clerk

No. 22-40757

RYAN RYDELL BONNER, *also known as* POOKIE,

Plaintiff—Appellant,

versus

BRIAN A. PEARCY, *Law Enforcement, City of Galveston Police Department*;
J. MELANCON, *Law Enforcement, City of Galveston Police Department*;
JACK ROADY, *Galveston County Criminal District Attorney*; C. D.
SIMMONS, *Supervisor, City of Galveston Police Department,*

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 3:19-CV-274

Before HAYNES, OLDHAM, and DOUGLAS, *Circuit Judges.*

PER CURIAM:*

The district court dismissed a 42 U.S.C. § 1983 complaint filed by Ryan Rydell Bonner, Texas prisoner # 2359198. Bonner subsequently filed a Federal Rule of Civil Procedure 60(b) motion challenging this ruling, which the district court denied after determining that Rule 60(b) was not a proper

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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vehicle for raising arguments that could have been presented earlier or for generally disagreeing with the district court's original ruling. Bonner has now filed a motion for authorization to proceed in forma pauperis (IFP) on appeal from the denial of his postjudgment motion. By moving this court to proceed IFP, he is challenging the district court's certification that any appeal would not be taken in good faith because Bonner will not present a nonfrivolous appellate issue. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997).

Before this court, Bonner argues that denying him IFP status would constitute a denial of due process. He is incorrect in his assertion. *See Carson v. Johnson*, 112 F.3d 818, 821-22 (5th Cir. 1997). In addition, Bonner challenges the district court's original ruling that he failed to state a valid claim for a false arrest. Although he asserts conclusionally that his postjudgment motion was based on mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, and fraud, he makes no meaningful arguments in support of such contentions. *See Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993) (stating that pro se litigants must brief arguments to preserve them). As Bonner has identified no error in the district court's reasons for denying his Rule 60(b) motion, he has abandoned any challenge to that decision. *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). His motion to proceed IFP on appeal is DENIED, and the appeal is DISMISSED. *See 5TH CIR. R. 42.2*. The dismissal as frivolous of this appeal counts 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). In addition, the district court's dismissal of his original complaint for failure to state a claim upon which relief may be granted also counts as a

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strike. *See* § 1915(g); *Adepegba*, 103 F.3d at 388. Bonner 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).