IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
June 29, 2011
Lyle W. Cayce
Clerk

No. 11-20003
Summary Calendar

EDDIE DON JOHNSON,

Plaintiff-Appellant

v.

JACQUELINE CHENIER, Supervising Parole Officer; RISSIE OWENS, Chairman; ROI DICKERSON, Supervising Parole Officer; CHIAZOR OFOROILE, Hearing Officer; JOSEPH PRESIFKE, Attorney,

Defendants-Appellees

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:10-CV-2881

Before WIENER, PRADO, and OWEN, Circuit Judges.

PER CURIAM:*

Eddie Don Johnson, Texas prisoner # 364033, proceeding pro se and in forma pauperis (IFP) appeals the district court's dismissal of his 42 U.S.C. § 1983 complaint as frivolous and for failure to state a claim. *See* 28 U.S.C. §§ 1915A(b)(1), 1915(e)(2)(B)(i), (ii). Although Johnson argues the merits of some of his claims on appeal, he wholly fails to challenge the district court's reasons

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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for the dismissal of his claims, specifically that (1) to the extent that Johnson sought to void his conviction and obtain immediate release from prison, the claims sounded in habeas and not in civil rights and, thus, would be dismissed without prejudice for failure to state a viable civil rights claim; (2) Johnson's claims for monetary damages for wrongful incarceration were barred by *Heck v. Humphrey*, 512 U.S. 477 (1994); and (3) Johnson's § 1983 claims and his claims asserted under the Americans with Disabilities Act (ADA), 42 U.S.C. § 12132, were time barred, and, in the alternative, that Johnson had failed to allege a nonfrivolous ADA claim. By failing to brief any argument challenging the district court's reasons for dismissal, Johnson has abandoned the only ground for appeal. *See Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993); *Brinkmann v. Dallas County Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987).

Johnson's appeal is without arguable merit and therefore frivolous. *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Because it is frivolous, it is dismissed. *See* 5TH CIR. R. 42.2. Johnson's motion for the appointment of counsel is denied.

The district court's dismissal of the complaint and this court's dismissal of the appeal count as strikes for purposes of § 1915(g). *See Adepegba v. Hammons*, 103 F.3d 383, 387-88 (5th Cir. 1996); *see also Patton v. Jefferson Correctional Center*, 136 F.3d 458, 462-63 (5th Cir. 1998). Johnson is CAUTIONED that if he accumulates three strikes under § 1915(g), he will not be able 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).

APPEAL DISMISSED; SANCTION WARNING ISSUED; MOTION DENIED.