

August 20, 2003

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

\_\_\_\_\_  
No. 03-20267  
Conference Calendar  
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JAMES H. KING,

Plaintiff-Appellant,

versus

ONE UNITED STATES GOVERNMENT,

Defendant-Appellee.

- - - - -  
Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. H-03-CV-474  
- - - - -

Before JONES, WIENER, and BENAVIDES, Circuit Judges

PER CURIAM:\*

James H. King, Texas prisoner # 800742, appeals the district court's dismissal of his 42 U.S.C. § 1983 action for failure to state a claim, under 28 U.S.C. § 1915(e)(2)(B)(ii).

King argues that 28 U.S.C. § 2244(d)'s limitations period violates the Suspension Clause. This argument is foreclosed by circuit precedent. Section § 2244(d)'s statute of limitations merely alters the procedure for bringing a habeas petition and does not unconstitutionally suspend the writ. Molo v. Johnson, 207 F.3d 773, 775 (5th Cir. 2000); Turner v. Johnson, 177 F.3d

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

390, 392 (5th Cir. 1999). King does not raise or brief his equal-protection or comity arguments, and these are deemed abandoned. See Yohey v. Collins, 985 F.2d 222, 225 (5th Cir. 1993); Brinkmann v. Dallas County Deputy Sheriff Abner, 813 F.2d 744, 748 (5th Cir. 1987).

King's appeal is frivolous and is DISMISSED. 5TH CIR. R. 42.2. The dismissal of this appeal as frivolous and the district court's dismissal for failure to state a claim count as two "strikes" for purposes of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 388 (5th Cir. 1996). King is CAUTIONED that if he accumulates three "strikes" under 28 U.S.C. § 1915(g), he will not be able to proceed in forma pauperis 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 28 U.S.C. § 1915(g).

APPEAL DISMISSED; THREE-STRIKES WARNING ISSUED.