

April 20, 2004

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-51006  
Conference Calendar

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JUAN ARTURO MONTOYA,

Plaintiff-Appellant,

versus

TROY WILLIAMSON, Warden, Former Warden, F.C.I. La Tuna;  
ROBERT M. TAPIA, Warden, F.C.I. La Tuna;  
D. RAMEY, Correctional Officer, F.S.L. La Tuna;  
F.C.I. LA TUNA SPECIAL HOUSING UNIT OFFICER/  
MEDICAL STAFF, at both F.C.I. La Tuna and the F.S.L.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. EP-03-CV-54-PRM  
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Before JOLLY, JONES, and SMITH, Circuit Judges.

PER CURIAM:\*

Juan Arturo Montoya, federal prisoner # 51939-019, appeals the district court's dismissal of his Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971) action. The district court dismissed the complaint as to defendants Williamson, Tapia, and Ramey on the basis that there is no respondeat superior doctrine in a Bivens action. Montoya has not

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

shown that the district court abused its discretion in dismissing his complaint as to those defendants as frivolous. See Norton v. Dimazana, 122 F.3d 286, 291 (5th Cir. 1997). Montoya has not briefed the issue whether the district court erred in dismissing the complaint as to the remaining defendants for want of prosecution and it is deemed abandoned. See Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993).

Montoya's appeal is without arguable merit and is thus frivolous. See Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983). Accordingly, the appeal is DISMISSED. 5TH CIR. R. 42.2. The dismissal of this appeal counts as a "strike" for purposes of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 387 (5th Cir. 1996). We caution Montoya that once he accumulates three strikes, he may not 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; SANCTION WARNING ISSUED.