

February 18, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-60994
Conference Calendar

SHADNEY JERMAINE BROWN,

Plaintiff-Appellant,

versus

STATE OF MISSISSIPPI DEPARTMENT OF CORRECTIONS;
MIKE WILSON, Superintendent; CHRISTOPHER EPPS, Commissioner;
MISSISSIPPI STATE LEGISLATIVE BOARD,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 4:03-CV-394-P-D

Before HIGGINBOTHAM, EMILIO M. GARZA, and PRADO, Circuit Judges.

PER CURIAM:*

Shadney Jermaine Brown, Mississippi prisoner # 82241, has appealed the district court's order denying Brown's application for leave to proceed in forma pauperis ("IFP") on the ground that Brown had failed to exhaust state remedies by pursuing relief in the prison grievance system. See 42 U.S.C. § 1997a(e). Brown argues that relief is not available to him under the prison grievance procedures and that requiring him to exhaust state

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

remedies would be unavailing. Brown has not shown that the district court abused its discretion in denying leave to proceed IFP. See Flowers v. Turbine Support Div., 507 F.2d 1242, 1244 (5th Cir. 1975) (standard of review); see also Alexander v. Tippah County, Miss., 351 F.3d 626, 629-30 (5th Cir. 2003); Ferrington v. Louisiana Dep't of Corr., 315 F.3d 529, 531 (5th Cir. 2002), cert. denied, 124 S. Ct. 206 (2003).

Because the appeal is frivolous, it is dismissed. See Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983); 5TH CIR. R. 42.2. We caution Brown that the dismissal of this appeal as frivolous counts as a strike for the purposes of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996).

APPEAL DISMISSED.