

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

October 24, 2007

No. 06-51605
Conference Calendar

Charles R. Fulbruge III
Clerk

KENNETH RAY BROWN

Plaintiff-Appellant

v.

OFFICE OF THE CLERK OF THE 10TH SUPREME COURT OF APPEALS
OF TEXAS AT WACO, TEXAS, SHARRI ROESSLER

Defendants-Appellees

Appeal from the United States District Court
for the Western District of Texas
USDC No. 6:06-CV-74

Before JOLLY, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:*

Kenneth Ray Brown, Texas prisoner # 334618, appeals the denial of his 42 U.S.C. § 1983 complaint for failure to state a cause of action. He argues that the Office of the Clerk of the 10th Supreme Court of Texas at Waco, Texas, violated his due process rights by failing to comply with its duty under Texas law to notify Brown's appellate counsel of record that his case had been remanded.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

However, because Brown's claims necessarily implicate the validity of his conviction, and because Brown has not shown that his conviction has been reversed or expunged, the district court properly concluded that his claim was barred under *Heck v. Humphrey*, 512 U.S. 477 (1994).

The district court dismissed a prior civil rights case filed by Brown as frivolous. See *Brown v. Wallace*, No. H-03-0827 (S.D. Tex. Jan. 25, 2005). That dismissal and the district court's dismissal of this civil rights claim as frivolous count as two strikes for purposes of 28 U.S.C. § 1915(g). See *Adepegba v. Hammons*, 103 F.3d 383, 387-88 (5th Cir. 1996). Brown is cautioned that if he accumulates three strikes under § 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 § 1915(g).

AFFIRMED; SANCTION WARNING ISSUED.