

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 14-60163
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 27, 2016

Lyle W. Cayce
Clerk

DAVID E. PAYNE,

Plaintiff–Appellant,

versus

AMERICAN CORRECTIONS ASSOCIATION;
MISSISSIPPI DEPARTMENT OF CORRECTIONS;
RONALD REID WELCH; MARGARET BINGHAM; HALEY BARBOUR;
ERNEST LEE; RUFUS BURKES; CAPTAIN JOHNSON;
LIEUTENANT THORNTON; LIEUTENANT FUNCHES;
LORETTA LYNCH; BARAK H. OBAMA;
FEDERAL BUREAU OF INVESTIGATIONS, JACKSON, MISSISSIPPI;
C.M.C.F., I.L.A.P.; DON BURKHALTER;
POST MASTER, United States Post Office, Jackson, Mississippi;
POST MASTER, C.M.C.F. Mail Room; AMERICAN BAR ASSOCIATION;
MISSISSIPPI ETHICS COMMISSION;
MISSISSIPPI VOLUNTEER LAWYERS;
CLERK, UNITED STATES DISTRICT COURT, LOUISIANA;
PATRICIA G. BERRY, in Her Individual Capacity;
DOMESTIC TERRORIST; CHRISTOPHER EPPS; CARLOS FUNCHES;
PATRICIA JOHNSON;
UNITED STATES OF AMERICA DEPARTMENT OF VETERANS
AFFAIRS;
UNITED STATES OF AMERICA,

Defendants–Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 3:11-CV-389

No. 14-60163

Before REAVLEY, SMITH, and HAYNES, Circuit Judges.

PER CURIAM:*

David Payne, Mississippi prisoner # 08755, appeals the dismissal of his civil complaint. He also moves for the appointment of counsel and waiver of filing fees and for a default judgment and sanctions.

In his brief, Payne uses abusive language regarding the district court and the magistrate judge. He was warned in another case that doing so could result in sanctions. *See Payne v. Epps*, No. 11-60257 (5th Cir. Sept. 28, 2011). Accordingly, the appeal is DISMISSED with prejudice. *See Theriault v. Silber*, 579 F.2d 302, 304 (5th Cir. 1978). Payne is WARNED that any future frivolous or abusive filings in this court or any court subject to this court's jurisdiction will subject him to additional sanctions and that he should review all pending matters to ensure that they are not frivolous or abusive. All of Payne's pending motions are DENIED.

The district court's dismissal counts as a strike under 28 U.S.C. § 1915(g). Payne has at least one other strike. *See Payne v. Stone*, No. 4:98-CV-94 (N.D. Miss. May 5, 1998). He is WARNED that if he accumulates three strikes, he will not be allowed to proceed IFP in any civil action or appeal while incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. *See* § 1915(g).

* 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.