

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-11283
Conference Calendar

RANDY LEE HADDERTON,

Plaintiff-Appellant,

versus

ROB LEE; A. STARK; JERRY RANDELL,
DPS Lubbock; CITY OF LUBBOCK, TEXAS;
CHIEF OF POLICE, LUBBOCK, TEXAS,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 1:99-CV-199

February 14, 2001

Before SMITH, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Randy Lee Hadderton, federal prisoner #25439-007, appeals the district court's dismissal of his 42 U.S.C. § 1983 complaint pursuant to Heck v. Humphrey, 512 U.S. 477 (1994). Hadderton has not adequately briefed the district court's determination that his 42 U.S.C. § 1983 claims are not cognizable under Heck. The issue is therefore abandoned on appeal. See Yohey v. Collins, 985 F.2d 222, 225 (5th Cir. 1993).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

We also conclude that the district court did not abuse its discretion in denying Hadderton's motion for recusal. United States v. MMR Corp., 954 F.2d 1040, 1044 (5th Cir. 1992)(28 U.S.C. § 144); United States v. Harrelson, 754 F.2d 1153, 1165 (5th Cir. 1985)(28 U.S.C. § 455).

We conclude further that the district court did not abuse its discretion in dismissing Hadderton's complaint without allowing discovery and did not err in staying discovery. McKethan v. Texas Farm Bureau, 996 F.2d 734, 738 (5th Cir. 1993).

The appeal is without arguable merit and thus frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. 5th Cir. R. 42.2. Hadderton is cautioned that the dismissal of this appeal as frivolous counts as a "strike" under 28 U.S.C. § 1915(g), as does the district court's dismissal of his complaint as frivolous. See Adepegba v. Hammons, 103 F.3d 383, 385-87 (5th Cir. 1996). He therefore has two "strikes" under 28 U.S.C. § 1915(g). Hadderton 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).

Hadderton's motions to consolidate, to stay the proceedings, and to file an attachment to his brief are DENIED.

APPEAL DISMISSED AS FRIVOLOUS; STRIKE WARNING ISSUED;
MOTIONS DENIED.