

June 21, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-10886
Conference Calendar

MARC ALLEN MASON,

Plaintiff-Appellant,

versus

JOEL RICHARDSON, Sheriff; BRUCE EVANS, Captain;
DEBBIE UNRUE, Lieutenant,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:05-CV-88

Before STEWART, DENNIS, and OWEN, Circuit Judges.

PER CURIAM:*

Marc Allen Mason, Randall County Jail prisoner # SO 33348,**
appeals the dismissal as frivolous of his pro se, in forma
pauperis (IFP) 42 U.S.C. § 1983 civil rights complaint. In his
complaint, he alleged that the appellees failed to make a
complete investigation into his allegations that he was kidnaped
and that a micro-transmitter was implanted in his throat.

* 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this opinion should not be published and is not precedent except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.

**Former TDCJ-ID ## 778038 and 1172158.

An IFP complaint may be dismissed as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) if it has no arguable basis in law or fact. Siqlar v. Hightower, 112 F.3d 191, 193 (5th Cir. 1997). A dismissal under § 1915(e)(2)(B)(i) is reviewed for abuse of discretion. Id.

Mason did not have a right to have the defendants protect his life, liberty, and property against invasion by private actors. See DeShaney v. Winnebago County Dep't of Social Servs., 489 U.S. 189, 195 (1989). Also, Mason has not shown that the exceptions to this general rule based on a special relationship or a state-created danger are applicable to this case. See Walton v. Alexander, 44 F.3d 1297, 1299-1304 (5th Cir. 1995) (en banc); see also Johnson v. Dallas Indep. Sch. Dist., 38 F.3d 198, 200 (5th Cir. 1994). Finally, Mason has failed to allege a violation of his equal protection rights because he makes no argument that he is a member of any protected class. See Washington v. Davis, 426 U.S. 229, 247-48 (1976).

Mason's appeal is without arguable merit and is frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is dismissed. See 5TH CIR. R. 42.2. The dismissal of this appeal as frivolous counts as a strike for purposes of 28 U.S.C. § 1915(g), as does the district court's dismissal. See Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996). We warn Mason that if he accumulates three strikes under § 1915(g), he will not be able to proceed IFP 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).

APPEAL DISMISSED; SANCTION WARNING ISSUED.