

October 24, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-61196
Conference Calendar

KELLY MANN,

Plaintiff-Appellant,

versus

DR. DONALD CABANA, Superintendent; EARNEST LEE, Warden; WILLIE WINTERS, Officer; ERIC FORD, Officer; "UNKNOWN" SHIVERS, Lieutenant; CHRISTOPHER B. EPPS, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 4:05-CV-7

Before JOLLY, DeMOSS, and STEWART, Circuit Judges.

PER CURIAM:*

Kelly Mann, Mississippi prisoner # 82723, moves this court for leave to proceed in forma pauperis (IFP) on appeal following the district court's dismissal with prejudice of his pro se and IFP civil rights complaint. The district court dismissed the complaint for failure to state a claim. See 28 U.S.C. § 1915(e)(2)(B)(ii), (g). We construe Mann's motion as a challenge to the district court's determination that the appeal

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

is not taken in good faith. See Baugh v. Taylor, 117 F.3d 197, 202 (5th Cir. 1997). A dismissal for failure to state a claim is reviewed de novo. Black v. Warren, 134 F.3d 732, 734 (5th Cir. 1998). The complaint should not be dismissed unless it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

Mann's brief is noncompliant with Rule 28(a)(9) because he fails to provide any argument relative to the issues that he identifies in his brief. See FED. R. APP. P. 28(a)(9); Grant v. Cuellar, 59 F.3d 523, 524 & n.2 (5th Cir. 1995). Mann's brief provides only a restatement of his issues. See Grant, 59 F.3d at 524 & n.2 (5th Cir. 1995).

Accordingly, Mann has failed to present a nonfrivolous issue for appeal. His motion for IFP is denied, and the appeal is dismissed as frivolous. See Baugh, 117 F.3d at 202 n.24; 5TH CIR. R. 42.2. The district court's dismissal of Mann's complaint and this court's dismissal of his appeal count as two strikes under 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 387 (5th Cir. 1996). We caution Mann that if he accumulates three strikes, he may no longer 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).

MOTION FOR IFP DENIED; APPEAL DISMISSED; SANCTION WARNING ISSUED.