

October 24, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-11377
Conference Calendar

JACKIE D. JOHNSON,

Plaintiff-Appellant,

versus

MARK YARBROUGH,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:05-CV-239

Before JOLLY, DeMOSS, and STEWART, Circuit Judges.

PER CURIAM:*

Jackie D. Johnson, Lamb County, Texas prisoner # 7037, appeals from the district court's dismissal of his 42 U.S.C. § 1983 complaint as frivolous and for failure to state a claim upon which relief may be granted. Because Johnson has failed to challenge the bases for the district court's dismissal on appeal, this appeal is subject to dismissal on that basis. See Brinkmann v. Dallas County Deputy Sheriff Abner, 813 F.2d 744, 748 (5th Cir. 1987). However, even if Johnson's appeal were not dismissed on that basis, the appeal lacks merit because Johnson's complaint

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

was barred pursuant to Heck v. Humphrey, 512 U.S. 477, 486-87 (1994).

Johnson'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.

Johnson 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. See Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996). He is also 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).

APPEAL DISMISSED; SANCTION WARNING ISSUED.