

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Anderson v. King

318 F. App'x 272 (5th Cir. 2009) · No. No. 08-60446 · Decided March 30, 2009

SUMMARY

The Fifth Circuit affirmed the dismissal as frivolous of Earl Lewis Anderson’s 42 U.S.C. § 1983 complaint against prison officials and denied his motion to proceed in forma pauperis on appeal. The court held that Anderson’s conclusory conspiracy allegations did not establish a nonfrivolous appellate claim. The dismissal counted as a strike under 28 U.S.C. § 1915(g), and the court imposed the resulting three-strikes bar on future in forma pauperis civil actions or appeals absent imminent danger of serious physical injury.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Per curiam; Jolly; Benavides; Haynes
JURISDICTION	Federal
DECIDED	March 30, 2009
DOCKET	No. 08-60446
DISPOSITION	dismissed
PROCEDURAL POSTURE	A Mississippi prisoner appealed the dismissal of his 42 U.S.C. § 1983 complaint as frivolous and challenged the district court's certification that the appeal was not taken in good faith. He sought authorization to proceed in forma pauperis on appeal.
STANDARD OF REVIEW	The court reviewed whether Anderson could demonstrate that his appeal would present a nonfrivolous issue, in connection with the district court's certification under <i>Baugh v. Taylor</i> .
PRECEDENTIAL VALUE	Nonprecedential unpublished opinion under 5th Cir. R. 47.5
PARTIES	Earl Lewis Anderson, Jr. v. Ron King, Larry C. Hardy, D. West, Bobby King, D. Gray, Warren Hancock, Christopher Epps, Lynda Powell, Florence Jones, L. Stewart, Eddie Wolfe, Henry Gagnon, M. Lewis, et al.

TOPICS

section 1983

prisoners rights

appellate procedure

civil rights

final judgment rule

PRACTICE AREAS

civil rights

prisoner litigation

appellate procedure

in forma pauperis proceedings

QUESTIONS PRESENTED

1. Whether Anderson demonstrated that his appeal would raise a nonfrivolous appellate claim sufficient to overcome the district court's good-faith certification.
2. Whether Anderson should be permitted to proceed in forma pauperis on appeal.
3. Whether the dismissal of the appeal as frivolous constituted a strike under 28 U.S.C. § 1915(g) and triggered the three-strikes bar.

HOLDINGS

1. Anderson's conclusory conspiracy allegations did not demonstrate that he would raise a nonfrivolous appellate claim.
2. Anderson's motion to proceed in forma pauperis on appeal was denied.
3. The appeal was dismissed as frivolous, and the dismissal counted as a strike under 28 U.S.C. § 1915(g). Because Anderson had accumulated at least three strikes, he was barred from proceeding in forma pauperis in future civil actions or appeals while incarcerated or detained, absent imminent danger of serious physical injury.

KEY QUOTATIONS

"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 of Anderson's suit as frivolous." (318 F. App'x at 272)

"Because Anderson has now accumulated at least three strikes, he is barred from proceeding 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." (318 F. App'x at 272)

FACTUAL BACKGROUND

Anderson was a Mississippi prisoner incarcerated at the South Mississippi Correctional Institution. He filed a 42 U.S.C. § 1983 complaint against 79 defendants with whom he had come into contact during his incarceration. His appellate contentions consisted of conclusory allegations that judges and prison officials conspired to deny him relief and adequate medical care.

PROCEDURAL HISTORY

The United States District Court for the Southern District of Mississippi dismissed Anderson's complaint against numerous prison officials as frivolous and certified that an appeal would not be taken in good faith. On appeal, Anderson argued principally that the magistrate judge and other judges and defendants had conspired against

him and alluded to a conspiracy to deny adequate medical care. The Fifth Circuit denied his motion to proceed in forma pauperis, dismissed the appeal as frivolous, and imposed the statutory three-strikes bar.

DISPOSITION

dismissed

CASES CITED

- Baugh v. Taylor, 117 F.3d 197, 202 (5th Cir. 1997)
- Babb v. Dorman, 33 F.3d 472, 476 (5th Cir. 1994)
- Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983)
- Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996)
- Anderson v. King, No. 06-61058 (5th Cir. July 18, 2007), cert. denied, 128 S. Ct. 1079 (2008)

OPINION

PER CURIAM.

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT United States Court of Appeals Fifth Circuit FILED March 27, 2009 No. 08-60446 Summary Calendar Charles R. Fulbruge III Clerk EARL LEWIS ANDERSON, JR. Plaintiff-Appellant v. RON KING; LARRY C. HARDY; D. WEST, Captain; BOBBY KING; D. GRAY; WARREN HANCOCK, Deputy; CHRISTOPHER EPPS; LYNDIA POWELL; FLORENCE JONES, Case Manager; L. STEWART; EDDIE WOLFE; HENRY GAGNON, Nurse; M. LEWIS, Nurse; ET AL. Defendants-Appellees Appeal from the United States District Court for the Southern District of Mississippi USDC No. 2:05-CV-1 USDC No. 2:05-CV-2174 Before JOLLY, BENAVIDES, and HAYNES, Circuit Judges.

PER CURIAM:* Earl Lewis Anderson, Mississippi prisoner # L1784, appeals the dismissal of his 42 U.S.C. § 1983 complaint against 79 defendants, all of whom he came into contact with while he was incarcerated at the South Mississippi Correctional Institution.

The district court dismissed his suit as frivolous and * 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. No. 08-60446 certified that his appeal was not taken in good faith. Anderson challenges the district court's certification decision pursuant to Baugh v. Taylor, 117 F.3d 197, 202 (5th Cir.

1997), and he requests that this court grant him authorization to proceed in forma pauperis (IFP) on appeal. The only discernable argument Anderson makes on appeal is that the magistrate judge conspired with other judges and the defendants to deny Anderson relief. He also alludes to a

conspiracy among prison officials to deny him adequate medical care. Anderson's conclusional allegations do not suffice to show that he will raise a nonfrivolous appellate claim.

See *Babb v. Dorman*, 33 F.3d 472, 476 (5th Cir. 1994). Anderson has failed to show that he will raise a nonfrivolous appellate claim. See *Baugh*, 117 F.3d 202; *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Consequently, his motion to proceed IFP on appeal is denied, and this appeal is dismissed as frivolous. See 5 TH C IR. R. 42.2; *Baugh*, 117 F.3d at 202 n.24.

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 of Anderson's suit as frivolous. See *Adepegba v. Hammons*, 103 F.3d 383, 387-88 (5th Cir. 1996). Anderson also earned a strike when this court dismissed as frivolous his appeal from the district court's interlocutory order denying him a temporary restraining order.

Anderson v. King, No. 06-61058 (5th Cir. July 18, 2007), cert. denied, 128 S. Ct. 1079 (2008). Because Anderson has now accumulated at least three strikes, he is barred from proceeding 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). IFP MOTION DENIED; APPEAL DISMISSED AS FRIVOLOUS; 28 U.S.C. § 1915(g) BAR IMPOSED.