

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PRECEDENTIAL VALUE	Nonprecedential unpublished opinion under 5th Cir. R. 47.5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

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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)