

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**FILED**

December 28, 2009

Charles R. Fulbruge III  
Clerk

\_\_\_\_\_  
No. 09-40398

Summary Calendar  
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JODY MCCREARY,

Plaintiff-Appellant

v.

OFFICER WENDALL GARDNER; OFFICER UNKNOWN FELIX,

Defendants-Appellees

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 6:09-CV-105  
\_\_\_\_\_

Before BENAVIDES, PRADO, and SOUTHWICK, Circuit Judges.

PER CURIAM:\*

Jody McCreary, Texas prisoner # 1142309, moves this court for leave to proceed in forma pauperis (IFP) in this appeal from the district court's dismissal of his 42 U.S.C. § 1983 complaint. The district court dismissed the complaint because McCreary had not shown that he paid the \$200 sanction imposed in *In re McCreary*, No. 08-40665, and, for the same reason, certified that the appeal was not taken in good faith. We deny the IFP motion and dismiss the appeal as frivolous because McCreary did not comply with the sanction when he failed to

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

obtain leave prior to filing the § 1983 complaint. Although the sanction was imposed in a habeas proceeding, the sanction applies to the instant case because McCreary is challenging the same conviction that he challenged in that case. Furthermore, McCreary does not address the district court's reasons for denying IFP. By failing to discuss the district court's rationale for denying his IFP motion, McCreary has abandoned the issue, and it is the same as if he had not appealed the district court's order. *See Brinkmann v. Dallas County Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987). Accordingly, McCreary's IFP motion is denied and his appeal is dismissed as frivolous. *See Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983); 5TH CIR. R. 42.2.

McCreary is cautioned that filing any future frivolous or repetitive motions on any matter in this court or any court subject to this court's jurisdiction will subject him to additional sanctions, as will the failure to withdraw any pending matters that are frivolous.

IFP DENIED; APPEAL DISMISSED; SANCTION WARNING ISSUED.