

Cite as 2019 Ark. 104  
**SUPREME COURT OF ARKANSAS**  
No. CV-17-63

JEREMY KENNEDY

APPELLANT

V.

JOHN FELTS, CHAIRMAN, ARKANSAS  
PAROLE BOARD

APPELLEE

Opinion Delivered April 18, 2019

APPELLEE'S MOTION TO DISMISS  
APPEAL

[JEFFERSON COUNTY CIRCUIT  
COURT, NO. 35CV-16-376]

HONORABLE JODI RAINES DENNIS,  
JUDGE

MOTION GRANTED IN PART AND  
DENIED IN PART; APPEAL DISMISSED.

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KAREN R. BAKER, Associate Justice

Appellant Jeremy Kennedy lodged an appeal in this court on January 25, 2017, from the dismissal without prejudice of his pro se petition to proceed in forma pauperis with respect to a petition for declaratory judgment and writ of mandamus.<sup>1</sup> Kennedy was advised that his brief-in-chief was due to be filed March 6, 2017. He subsequently tendered a brief that did not conform to the rules of this court, and it was returned to him for correction. The corrected brief was due here on March 20, 2017.

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<sup>1</sup>The circuit court initially granted Kennedy's request to proceed as a pauper, but it revoked that ruling, finding that Kennedy had on three or more prior occasions brought actions that were frivolous, malicious, or failed to state a claim on which relief was warranted when he was not in imminent danger of serious physical injury. The order further provided that should Kennedy desire to proceed with the case, he would be required to submit a motion to reopen the case with the requisite filing fee within ten days of the order.

The appellee now seeks dismissal of the appeal for failure to file a brief and further asks that this court declare a “strike” pursuant to Arkansas Code Annotated section 16-68-607 (Repl. 2005) because the failure to file a brief renders the appeal a “frivolous action” within the meaning of the statute. We dismiss the appeal but deny the appellee’s request that this court declare a strike under the statute.

Failure of a party in an appeal to file a brief may constitute abandonment of the appeal. *Barber v. Kelley*, 2017 Ark. 214. Arkansas Supreme Court Rule 4-5 (2018) provides that a civil appeal may be dismissed if a brief is not timely filed. *Id.* As Kennedy has taken no further action to proceed with the appeal, the appellee has stated good cause to dismiss the appeal.

We decline to accept the appellee’s position that Kennedy’s failure to file a brief in this appeal should be counted as a strike. Section 16-68-607 precludes an incarcerated person from bringing a civil action or an appeal therefrom when the incarcerated person has, on three or more prior occasions, brought an action that was frivolous, malicious, or failed to state a claim on which relief may be granted. In dismissing the appeal for failure to file a brief, this court has not reviewed the correctness of the circuit court’s order to determine whether the appeal is from a civil action that was governed by the statute—a determination that would have occurred in due course had Kennedy pursued the appeal. Accordingly, the circuit court’s order declaring a strike under the statute remains in place.

Motion granted in part and denied in part; appeal dismissed.

*Jeremy Kennedy*, pro se appellant.

*Leslie Rutledge, Att’y Gen., by: Reid P. Adkins, Ass’t Att’y Gen., for appellee.*