

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

October 20, 2008

Charles R. Fulbruge III
Clerk

No. 07-20515

Summary Calendar

GREGORY D JOHNSON

Plaintiff-Appellant

v.

RONALD L KELLY

Defendant-Appellee

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:02-CV-344

Before KING, DENNIS, and OWEN, Circuit Judges.

PER CURIAM:*

Gregory D. Johnson, Texas inmate # 652074, appeals the district court's grant of summary judgment in favor of defendant Ronald L. Kelly and the dismissal of his 42 U.S.C. § 1983 complaint. Johnson argues that the district court erred in its findings and conclusions on remand regarding Kelly's intent to retaliate. We review a grant of summary judgment de novo using the same standard used by the district court. *Amburgey v. Corhart Refractories Corp.*, 936 F.2d 805, 809 (5th Cir. 1991).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Johnson has not addressed the district court's conclusions that he failed to show two other required elements for a valid retaliation claim: an adverse act and causation. See *Morris v. Powell*, 449 F.3d 682, 684 (5th Cir. 2006). Therefore, he has abandoned any challenge to the district court's conclusions regarding these elements. See *Brinkmann v. Dallas County Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987). Although pro se briefs are afforded liberal construction, *Haines v. Kerner*, 404 U.S. 519, 520 (1972), even pro se litigants must brief arguments in order to preserve them. *Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993).

Johnson's motion for appointment of appellate counsel is denied. See *Richardson v. Henry*, 902 F.2d 414, 417 (5th Cir. 1990).

Johnson's appeal is without arguable merit and therefore 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. The dismissal of this appeal as frivolous counts as a strike for purposes of 28 U.S.C. § 1915(g). See *Adepegba v. Hammons*, 103 F.3d 383, 387-88 (5th Cir. 1996). Johnson is cautioned that if he accumulates three strikes, he will no longer be allowed 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).

MOTION DENIED; APPEAL DISMISSED; SANCTION WARNING ISSUED.