

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

United States Court of Appeals  
Fifth Circuit

**FILED**

October 9, 2009

Charles R. Fulbruge III  
Clerk

\_\_\_\_\_  
No. 08-60667

Summary Calendar

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SHAWN BURTON,

Plaintiff-Appellant

v.

FRANK DILLARD; MICHAEL JAMES MAGAYHEE; CITY OF RIDGELAND  
MISSISSIPPI; ANITA WITTINGTON; EMERY E. DYER; TERRENCE  
BOUDREAUX; ROCCO BONURA; THE BULLDOG INC.,

Defendants-Appellees

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SHAWN BURTON,

Plaintiff-Appellant

v.

CHIEF OF POLICE, City of Ridgeland; DIRECTOR OF INTERNAL AFFAIRS  
DIVISION, City of Ridgeland; COMMAND SERGEANTS, City of Ridgeland;  
POLICE OFFICERS UNKNOWN, City of Ridgeland; CITY MANAGER, City of  
Ridgeland; THE CITY OF RIDGELAND, MISSISSIPPI,

Defendants-Appellees

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Appeals from the United States District Court  
for the Southern District of Mississippi  
USDC No. 3:05-CV-292  
USDC No. 3:06-CV-266  
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Before KING, STEWART, and HAYNES, Circuit Judges.

PER CURIAM:\*

Shawn Burton, Mississippi prisoner # 82975, appeals the dismissal of his two civil rights complaints in which he argued that his August 9, 1999 arrest was unlawful on various grounds. As a result of that arrest, he was charged with robbery, auto burglary, and kidnapping; he was eventually convicted of robbery. *See Burton v. State*, 914 So. 2d 288, 289 (Miss. Ct. App. 2005). Burton also complains that his claims were improperly consolidated.

We discern no abuse of discretion in the district court's decision to consolidate the matters. *See Green v. Polunsky*, 229 F.3d 486, 488 (5th Cir. 2000). With respect to the merits, the district court did not err in dismissing Burton's claims under *Heck v. Humphrey*, 512 U.S. 477 (1994). *See Wells v. Bonner*, 45 F.3d 90, 95 (5th Cir. 1995). As Burton's appeal presents no legal points arguable on their merits, it is 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 under 28 U.S.C. § 1915(g). *See Adepegba v. Hammons*, 103 F.3d 383, 385-87 (5th Cir. 1996). Burton previously accumulated two strikes in the prior § 1983 action challenging the legality of his arrest. Accordingly, Burton is now barred from proceeding in forma pauperis pursuant to § 1915 in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is in imminent danger of serious physical injury. *See* § 1915(g).

APPEAL DISMISSED; 28 U.S.C. § 1915(g) BAR IMPOSED.

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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.