

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

No. 16-11792
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

February 28, 2018

Lyle W. Cayce
Clerk

ISRAEL TREY RODRIGUEZ,

Plaintiff-Appellant

v.

WISE COUNTY JAIL, Sheriff Office; LIEUTENANT DAVID ARMSTRONG;
SERGEANT NFN BRUENER; WISE COUNTY JAILERS; OFFICER NFN
THOMAS, Sergeant; OFFICER NFN SHEPPS; ADMINISTRATOR RICK
DENNEY; OFFICER NFN FABELA; OFFICER NFN VALLEZ; SERGEANT
NFN TAYLOR; SHERIFF DAVID WALKER; CAPTAIN NFN GILLAN;
MEDICAL NURSE; MEDICAL OFFICER,

Defendants-Appellees

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:16-CV-662

Before REAVLEY, PRADO, and GRAVES, Circuit Judges.

PER CURIAM:*

Israel Trey Rodriguez, Texas prisoner # 2068654, appeals the district court's dismissal pursuant to 28 U.S.C. § 1915A of his 42 U.S.C. § 1983 action as frivolous and for failure to state a claim. Rodriguez, proceeding pro se,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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alleged in the district court that, while he was incarcerated as a pretrial detainee in the Wise County, Texas, jail, he was sprayed with chemicals on multiple occasions without justification. He alleged that the individual defendants, to varying degrees, used excessive force and were deliberately indifferent to his medical needs. The district court dismissed Rodriguez's complaint on the grounds that, *inter alia*, Rodriguez sued the individual defendants only in their official capacities and, even if it were to give credence to Rodriguez's constitutional claims, Rodriguez failed to state a claim against Wise County because he failed to allege any policy or custom of Wise County that led to constitutionally violative conduct.

Rodriguez's appellate brief does not address the district court's reasons for dismissing his claims. Although we afford pro se briefs liberal construction, even pro se litigants must brief arguments to preserve them. *Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993). By failing to identify any error in the district court's order regarding the dismissal of his claims, it is the same as if Rodriguez had not appealed the district court's judgment. *See Brinkmann v. Dallas Cty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987).

Rodriguez's appeal is without arguable merit and is frivolous. *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Because the appeal is frivolous, it is dismissed. *See FIFTH CIR. R. 42.2*. Rodriguez's motion for leave to supplement the record is denied. *See Theriot v. Parish of Jefferson*, 185 F.3d 477, 491 n.26 (5th Cir. 1999).

Our dismissal of Rodriguez's appeal and the district court's dismissal pursuant to § 1915A both count as strikes under 28 U.S.C. § 1915(g). *See Adepegba v. Hammons*, 103 F.3d 383, 387-88 (5th Cir. 1996). Rodriguez is cautioned that, if he accumulates three strikes, he will be barred from proceeding in forma pauperis in any civil action or appeal filed while he is

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incarcerated or detained in any facility unless he “is under imminent danger of serious physical injury.” § 1915(g).

APPEAL DISMISSED; MOTION DENIED; SANCTION WARNING ISSUED.