

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

United States Court of Appeals
Fifth Circuit

FILED

June 22, 2018

Lyle W. Cayce
Clerk

No. 17-20402
Summary Calendar

ADRIAN GASTON,

Plaintiff-Appellant

v.

KIM OGG; ART ACEVEDO; KATHERINE CABANISS,

Defendants-Appellees

Appeals from the United States District Court
for the Southern District of Texas
USDC No. 4:17-CV-1383

Before DAVIS, COSTA, and ENGELHARDT, Circuit Judges.

PER CURIAM:*

Adrian Gaston, Texas inmate # 02167020, is currently serving a life sentence without parole after his conviction for capital murder. In May 2017, while still in pretrial custody, he filed a 42 U.S.C. § 1983 complaint against the defendants challenging their actions in the course of the murder investigation and pretrial proceedings. Gaston now appeals the district court's dismissal of

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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his complaint as frivolous and for failure to state a claim. *See* 28 U.S.C. § 1915(e)(2)(B).

The successful prosecution of Gaston's claims against the defendants "would necessarily imply that [his] criminal conviction [and related pretrial detention] was wrongful." *Heck v. Humphrey*, 412 U.S. 477, 486 n.6 (1994). Because Gaston does not allege, much less show, that his detention and murder conviction have been reversed, expunged, invalidated, or called into question by a federal court's issuance of a writ of habeas corpus, *Heck* bars his claims. *Id.* at 486-87.

Gaston's appeal is without arguable merit and is dismissed as frivolous. *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983); 5TH CIR. R. 42.2. The dismissal of this appeal as frivolous and the district court's dismissal of Gaston's complaint as frivolous and for failure to state a claim each count as a strike for purposes of § 1915(g). *See Adepegba v. Hammons*, 103 F.3d 383, 387-88 (5th Cir. 1996). Gaston is hereby warned that once he accumulates three strikes, he may not proceed IFP 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).

APPEAL DISMISSED AS FRIVOLOUS; SANCTION WARNING ISSUED.