

APPENDIX A

COURT OF APPEALS DECISION

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

October 27, 2020

Ms. Karen S. Mitchell
Northern District of Texas, Amarillo
United States District Court
205 E. 5th Street
Room F-13240
Amarillo, TX 79101

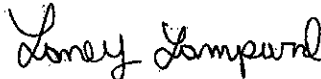
No. 20-10656 Don Basey v. TDCJ
USDC No. 2:20-CV-134

Dear Ms. Mitchell,

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Laney L. Lampard, Deputy Clerk
504-310-7652

LYLE W. CAYCE
Clerk of the United States Court
of Appeals for the Fifth Circuit

Laney Lampard

By: _____
Laney L. Lampard, Deputy Clerk

ENTERED AT THE DIRECTION OF THE COURT



A True Copy
Certified order issued Oct 27, 2020

Lyle W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

Fifth Circuit

FILED

March 27, 2006

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III
Clerk

No. 05-10205
Summary Calendar

DON WAYNE BASEY,

Plaintiff-Appellant,

versus

JAMES D. MOONEYHAM; TINA VITOLO;
RICAHRD WATHEN; VIKKI WRIGHT; DANNY HORTON,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 7:05-CV-6-R

Before HIGGINBOTHAM, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

Don Wayne Basey, Texas prisoner # 1192566, has filed a motion for leave to proceed in forma pauperis (IFP) on appeal and an injunction and request for a transfer to a different housing facility. The district court dismissed Basey's 42 U.S.C. § 1983 civil rights complaint without prejudice as barred by the three-strikes bar of 28 U.S.C. § 1915(g) and this court's prior sanction order.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

For the first time in his IFP motion, Basey alleges that the defendants have retaliated against him by administering contaminated food trays, drugs, and psychotropic medication in his food. He also argues for the first time that the defendants have refused to adhere to a medical directive that he be placed in a single cell, that he went on a "hunger strike," that the defendants refused to give him medical attention following surgery, and that the defendants spread rumors about his homosexuality. These arguments will not be addressed for the first time on appeal. See Leverette v. Louisville Ladder Co., 183 F.3d 339, 342 (5th Cir. 1999).

This court has previously sanctioned Basey for filing frivolous pleadings, and Basey does not dispute that he received three strikes under § 1915(g). See Basey v. Collins, No. 95-40438 (5th Cir. Dec. 21, 1995) (unpublished); Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996). Therefore, to proceed IFP on appeal, he must demonstrate that he is under threat of imminent danger or serious bodily injury. See § 1915(g).

Basey renews his argument that his life endangerment request has been ignored and that his attempt to get a transfer to a different housing facility has been denied. Basey does not allege in his IFP motion facts showing that he was under threat of "serious bodily injury" at the time he filed his notice of appeal or IFP motion. See Baños v. O'Guin, 184 F.3d 883, 884

(5th Cir. 1998). Accordingly, Basey is not entitled to proceed IFP on appeal. See id.

In his request for an injunction and a prison unit transfer, Basey argues that he is in "imminent danger" due to an assault by prison officials on March 7, 2005. He filed his request for an injunction on March 17, 2005. Basey names three specific offenders and alleges that his neck injury required x-rays on March 9 or 10, 2005. Basey argues that this attack was in retaliation for the filing of his civil rights complaint.

There is no evidence in the record to support Basey's allegations. Rather, the record contains evidence of one housing transfer at Basey's request, a history of grievance responses indicating that Basey had failed to abide by direct orders from prison officials, and investigations finding that Basey's life endangerment claims were meritless. Although the record and Basey's exhibits include medical records, neither the exhibits nor the records reference any March assault. Moreover, none of Basey's grievances mention his offenders from the March assault. Therefore, Basey's motion for an injunction is denied.

Basey's appeal is without arguable merit and is thus frivolous. See Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983). Accordingly, the appeal is dismissed. See 5TH CIR. R. 42.2.

In light of the prior sanctions imposed against Basey, he is now ordered to pay sanctions in the amount of \$255, the appellate

filing fee cost, payable to the clerk of this court. See 5TH CIR. R. 3. . The clerk of this court and the clerks of all federal district courts within this circuit are directed to refuse to file any pro se civil complaint or appeal by Basey unless Basey submits proof of satisfaction of this sanction. If Basey attempts to file any further notices of appeal or original proceedings in this court without such proof the clerk will docket them for administrative purposes only. Any other submissions which do not show proof that the sanction has been paid will neither be addressed nor acknowledged.

IFP AND INJUNCTION DENIED; APPEAL DISMISSED AS FRIVOLOUS;
SANCTION IMPOSED.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

December 01, 2020

Ms. Karen S. Mitchell
Northern District of Texas, Amarillo
United States District Court
205 E. 5th Street
Room E-13240
Amarillo, TX 79101

No. 20-10666 Don Basey v. A. Chavez, et al
USDC No. 2:20-CV-145

Dear Ms. Mitchell,

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk

Claudia N. Farrington

By: _____
Claudia N. Farrington, Deputy Clerk
504-310-7706

cc w/encl:
Mr. Don Wayne Basey

United States Court of Appeals
for the Fifth Circuit

No. 20-10666



A True Copy
Certified order issued Dec 01, 2020

Lyle W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

DON WAYNE BASEY,

Plaintiff—Appellant,

versus

A. CHAVEZ; RIVERA, PROPERTY OFFICER,

Defendants—Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:20-CV-145

CLERK'S OFFICE:

Under FED. R. APP. P. 42(B), the appeal is dismissed as of
December 01, 2020, pursuant to appellant's motion.

LYLE W. CAYCE
Clerk of the United States Court
of Appeals for the Fifth Circuit

Claudia N. Farrington

By: _____
Claudia N. Farrington, Deputy Clerk

ENTERED AT THE DIRECTION OF THE COURT

Fifth Circuit

FILED

March 27, 2006

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III
Clerk

No. 05-10205
Summary Calendar

DON WAYNE BASEY,

Plaintiff-Appellant,

versus

JAMES D. MOONEYHAM; TINA VITOLO;
RICAHRD WATHEN; VIKKI WRIGHT; DANNY HORTON,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 7:05-CV-6-R

Before HIGGINBOTHAM, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

Don Wayne Basey, Texas prisoner # 1192566, has filed a motion for leave to proceed in forma pauperis (IFP) on appeal and an injunction and request for a transfer to a different housing facility. The district court dismissed Basey's 42 U.S.C. § 1983 civil rights complaint without prejudice as barred by the three-strikes bar of 28 U.S.C. § 1915(g) and this court's prior sanction order.

* 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.

For the first time in his IFP motion, Basey alleges that the defendants have retaliated against him by administering contaminated food trays, drugs, and psychotropic medication in his food. He also argues for the first time that the defendants have refused to adhere to a medical directive that he be placed in a single cell, that he went on a "hunger strike," that the defendants refused to give him medical attention following surgery, and that the defendants spread rumors about his homosexuality. These arguments will not be addressed for the first time on appeal. See Leverette v. Louisville Ladder Co., 183 F.3d 339, 342 (5th Cir. 1999).

This court has previously sanctioned Basey for filing frivolous pleadings, and Basey does not dispute that he received three strikes under § 1915(g). See Basey v. Collins, No. 95-40438 (5th Cir. Dec. 21, 1995) (unpublished); Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996). Therefore, to proceed IFP on appeal, he must demonstrate that he is under threat of imminent danger or serious bodily injury. See § 1915(g).

Basey renews his argument that his life endangerment request has been ignored and that his attempt to get a transfer to a different housing facility has been denied. Basey does not allege in his IFP motion facts showing that he was under threat of "serious bodily injury" at the time he filed his notice of appeal or IFP motion. See Baños v. O'Guin, 184 F.3d 883, 884

(5th Cir. 1998). Accordingly, Basey is not entitled to proceed IFP on appeal. See id.

In his request for an injunction and a prison unit transfer, Basey argues that he is in "imminent danger" due to an assault by prison officials on March 7, 2005. He filed his request for an injunction on March 17, 2005. Basey names three specific offenders and alleges that his neck injury required x-rays on March 9 or 10, 2005. Basey argues that this attack was in retaliation for the filing of his civil rights complaint.

There is no evidence in the record to support Basey's allegations. Rather, the record contains evidence of one housing transfer at Basey's request, a history of grievance responses indicating that Basey had failed to abide by direct orders from prison officials, and investigations finding that Basey's life endangerment claims were meritless. Although the record and Basey's exhibits include medical records, neither the exhibits nor the records reference any March assault. Moreover, none of Basey's grievances mention his offenders from the March assault. Therefore, Basey's motion for an injunction is denied.

Basey's appeal is without arguable merit and is thus frivolous. See Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983). Accordingly, the appeal is dismissed. See 5TH CIR. R. 42.2.

In light of the prior sanctions imposed against Basey, he is now ordered to pay sanctions in the amount of \$255, the appellate

filing fee cost, payable to the clerk of this court. See 5TH CIR. R. 3. The clerk of this court and the clerks of all federal district courts within this circuit are directed to refuse to file any pro se civil complaint or appeal by Basey unless Basey submits proof of satisfaction of this sanction. If Basey attempts to file any further notices of appeal or original proceedings in this court without such proof the clerk will docket them for administrative purposes only. Any other submissions which do not show proof that the sanction has been paid will neither be addressed nor acknowledged.

IFP AND INJUNCTION DENIED; APPEAL DISMISSED AS FRIVOLOUS;
SANCTION IMPOSED.

United States Court of AppealsFIFTH CIRCUIT
OFFICE OF THE CLERKLYLE W. CAYCE
CLERKTEL 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

September 28, 2020

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 20-90029 In re: Don Basey

Enclosed is an order entered in this case.

Sincerely, -

LYLE W. CAYCE, Clerk

Claudia N. Farrington

By:

Claudia N. Farrington, Deputy Clerk
504-310-7706

Mr. Don Wayne Basey

RECEIVED: 2-23-22

No. 20-20028

also show that he is under imminent danger of serious physical injury.

2. § 1915(g).

Barney complains that the prison officials have acted with deliberate indifference to his medical condition. Barney complains also of untreated pain in his left side and of contaminated food and water. He says that prison officials are trying to kill him in retaliation for his litigiousness.

Because Barney has failed to make the required showing, the motion for leave to proceed *in forma pauperis* is DENIED.

EPITH H. JONES
United States District Judge

APPENDIX A
DISTRICT COURT DECISION

CASREF,CLOSED,RENO

U.S. District Court
Northern District of Texas (Amarillo)
CIVIL DOCKET FOR CASE #: 2:20-cv-00134-Z-BR

Basey v. Texas Department of Criminal Justice
Assigned to: Judge Matthew J. Kacsmark
Referred to: Magistrate Judge Lee Ann Reno
Cause: 42:1983 Prisoner Civil Rights

Date Filed: 05/21/2020
Date Terminated: 05/21/2020
Jury Demand: None
Nature of Suit: 550 Prisoner Pet/Other: Civil Rights
Jurisdiction: Federal Question

Plaintiff**Don Wayne Basey**

represented by **Don Wayne Basey**
02301499
TDCJ Dalhart Unit
11950 FM 998
Dalhart, TX 79022
PRO SE

V.

Defendant**Texas Department of Criminal Justice**

Date Filed	#	Docket Text
05/21/2020	<u>1</u>	New Case Notes: A filing fee has not been paid. CASREF case referral set and case referred to Magistrate Judge Reno (see Special Order 3). (nhp) Modified date filed on 5/22/2020 (nhp). (Entered: 05/22/2020)
05/21/2020	<u>2</u>	COMPLAINT against Texas Department of Criminal Justice filed by Don Wayne Basey. Unless exempted, attorneys who are not admitted to practice in the Northern District of Texas must seek admission promptly. Forms, instructions, and exemption information may be found at www.txnd.uscourts.gov , or by clicking here: Attorney Information - Bar Membership . If admission requirements are not satisfied within 21 days, the clerk will notify the presiding judge. (nhp) (Entered: 05/22/2020)
05/21/2020	<u>3</u>	Order Administratively Closing Case. In light of the prior sanctions imposed against Basey, he is now ordered to pay sanctions in the amount of \$255, the appellate filing fee cost, payable to the clerk of this court. See 5TH CIR.R. 3. The clerk of this court and the clerks of all federal district courts within this circuit are directed to refuse to file any pro se civil complaint or appeal by Basey unless Basey submits proof of satisfaction of this sanction. If Basey attempts to file any further notices of appeal or original proceedings in this court without such proof the clerk will docket them for administrative purposes only. Any other submissions which do not show proof that the sanction has been paid will neither be addressed nor acknowledged. (Ordered by Judge Matthew J. Kacsmark on 5/21/2020) (nhp) (Entered: 05/22/2020)
05/22/2020		***Clerk's Notice of delivery: (see NEF for details) Docket No:3. Public Docket Sheet Included. Fri May 22 13:53:33 CDT 2020 (crt) Modified text on 5/22/2020 (nhp).

	(Entered: 05/22/2020)
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BARRED,CASREF,CLOSED,RENO

**U.S. District Court
Northern District of Texas (Amarillo)
CIVIL DOCKET FOR CASE #: 2:20-cv-00145-Z-BR**

APP. NO. 20-666

Basey v. Chavez et al
Assigned to: Judge Matthew J. Kacsmaryk
Referred to: Magistrate Judge Lee Ann Reno
Cause: 42:1983 Prisoner Civil Rights

Date Filed: 05/29/2020
Date Terminated: 05/29/2020
Jury Demand: None
Nature of Suit: 550 Prisoner Pet/Other: Civil Rights
Jurisdiction: Federal Question

Plaintiff**Don Wayne Basey**

represented by **Don Wayne Basey**
02301499
TDCJ Dalhart Unit
11950 FM 998
Dalhart, TX 79022
PRO SE

V.

Defendant**A Chavez****Defendant**

Rivera
Property Officer

Date Filed	#	Docket Text
05/29/2020	<u>1</u>	New Case Notes: A filing fee has not been paid. CASREF case referral set and case referred to Magistrate Judge Reno (see Special Order 3). (daa) (Entered: 05/29/2020)
05/29/2020	<u>2</u>	COMPLAINT against All Defendants filed by Don Wayne Basey. Unless exempted, attorneys who are not admitted to practice in the Northern District of Texas must seek admission promptly. Forms, instructions, and exemption information may be found at www.txnd.uscourts.gov , or by clicking here: Attorney Information - Bar Membership . If admission requirements are not satisfied within 21 days, the clerk will notify the presiding judge. (daa) (Entered: 05/29/2020)
05/29/2020	<u>3</u>	Order Administratively Closing Case: In light of the prior sanctions imposed against Basey, he is now ordered to pay sanctions in the amount of \$255, the appellate filing fee cost, payable to the clerk of this court. See 5TH CIR.R. 3. The clerk of this court and the clerks of all federal district courts within this circuit are directed to refuse to file any pro se civil complaint or appeal by Basey unless Basey submits proof of satisfaction of this sanction. If Basey attempts to file any further notices of appeal or original proceedings in this court without such proof the clerk will docket them for administrative purposes only. Any other submissions which do not show proof that the sanction has been paid will neither be addressed nor acknowledged. (daa) (Entered: 05/29/2020)
05/29/2020		***Clerk's Notice of delivery: (see NEF for details) Docket No:3. Public docket sheet included. Fri May 29 16:31:49 CDT 2020 (crt) (Entered: 05/29/2020)

BARRED,CASREF,CLOSED,RENO

**U.S. District Court
Northern District of Texas (Amarillo)
CIVIL DOCKET FOR CASE #: 2:20-cv-00181-Z-BR**

Basey v. Rivera
Assigned to: Judge Matthew J. Kacsmaryk
Referred to: Magistrate Judge Lee Ann Reno
Cause: 42:1983 Prisoner Civil Rights

Date Filed: 07/22/2020
Date Terminated: 07/22/2020
Jury Demand: None
Nature of Suit: 550 Prisoner Pet/Other: Civil Rights
Jurisdiction: Federal Question

Plaintiff**Don Wayne Basey**

represented by **Don Wayne Basey**
02301499
TDCJ Dalhart Unit
11950 FM 998
Dalhart, TX 79022
PRO SE

V.

Defendant

Rivera
Property Officer

Date Filed	#	Docket Text
07/22/2020	<u>1</u>	New Case Notes: A filing fee has not been paid. CASREF case referral set and case referred to Magistrate Judge Reno (see Special Order 3). (nhp) (Entered: 07/27/2020)
07/22/2020	<u>2</u>	COMPLAINT against Rivera filed by Don Wayne Basey. Unless exempted, attorneys who are not admitted to practice in the Northern District of Texas must seek admission promptly. Forms, instructions, and exemption information may be found at www.txnd.uscourts.gov , or by clicking here: Attorney Information - Bar Membership . If admission requirements are not satisfied within 21 days, the clerk will notify the presiding judge. (nhp) Modified (Photos were returned without copying due to the inappropriate content depicted in the photos and the prior sanction order.) on 7/27/2020 (nhp). (Entered: 07/27/2020)
07/22/2020	<u>3</u>	Notice that the clerk has been instructed to apply the attached sanction order to the submissions indexed under number: 2:20-cv-181. The sanction order was originally filed in: 05-10205 and states: In light of the prior sanctions imposed against Basey, he is now ordered to pay sanctions in the amount of \$255, the appellate filing fee cost, payable to the clerk of this court. See 5TH CIR.R. 3. The clerk of this court and the clerks of all federal district courts within this circuit are directed to refuse to file any pro se civil complaint or appeal by Basey unless Basey submits proof of satisfaction of this sanction. If Basey attempts to file any further notices of appeal or original proceedings in this court without such proof the clerk will docket them for administrative purposes only. Any other submissions which do not show proof that the sanction has been paid will neither be addressed nor acknowledged. That order prohibits the filing of a case, so the number assigned to this closed matter remains for indexing purposes only. (nhp) (Entered: 07/27/2020)
07/27/2020		***Clerk's Notice of delivery: (see NEF for details) Docket No:3. (Public docket sheet also mailed to Plaintiff) Mon Jul 27 10:08:21 CDT 2020 (crt) (Entered: 07/27/2020)

RECEIVED
01-05-2022

BARRIED,CASREF,CLOSED,RENO

**U.S. District Court
Northern District of Texas (Amarillo)
CIVIL DOCKET FOR CASE #: 2:20-cv-00303-Z-BR**

Basey v. Kevin Belt et al
Assigned to: Judge Matthew J. Kacsmaryk
Referred to: Magistrate Judge Lee Ann Reno
Cause: 42:1983 Prisoner Civil Rights

Date Filed: 12/29/2020
Date Terminated: 12/30/2020
Jury Demand: None
Nature of Suit: 550 Prisoner Pet/Other: Civil Rights
Jurisdiction: Federal Question

Plaintiff

Don Wayne Basey

represented by **Don Wayne Basey**
02301499
TDCJ Dalhart Unit
11950 FM 998
Dalhart, TX 79022
PRO SE

V.

Defendant

Kevin Belt et al

Date Filed	#	Docket Text
12/29/2020	<u>1</u>	New Case Notes: A filing fee has not been paid. CASREF case referral set and case referred to Magistrate Judge Reno (see Special Order 3). (nhp) (Entered: 12/30/2020)
12/29/2020	<u>2</u>	COMPLAINT against Kevin Belt et al filed by Don Wayne Basey. Unless exempted, attorneys who are not admitted to practice in the Northern District of Texas must seek admission promptly. Forms, instructions, and exemption information may be found at www.txnd.uscourts.gov , or by clicking here: Attorney Information - Bar Membership . If admission requirements are not satisfied within 21 days, the clerk will notify the presiding judge. (nhp) (Entered: 12/30/2020)
12/30/2020	<u>3</u>	Notice that the clerk has been instructed to apply the attached sanction order to the submissions indexed under number: 2:20-CV-303. The sanction order was originally filed in: 05-10205 and states: In light of the prior sanctions imposed against Basey, he is now ordered to pay sanctions in the amount of \$255, the appellate filing fee cost, payable to the clerk of this court. See 5TH CIR.R. 3. The clerk of this court and the clerks of all federal district courts within this circuit are directed to refuse to file any pro se civil complaint or appeal by Basey unless Basey submits proof of satisfaction of this sanction. If Basey attempts to file any further notices of appeal or original proceedings in this court without such proof the clerk will docket them for administrative purposes only. Any other submissions which do not show proof that the sanction has been paid will neither be addressed nor acknowledged.. That order prohibits the filing of a case, so the number assigned to this closed matter remains for indexing purposes only. (nhp) (Entered: 12/30/2020)
12/30/2020		***Clerk's Notice of delivery: (see NEF for details) Docket No:3. (Public docket sheet also mailed to Plaintiff) Wed Dec 30 13:29:16 CST 2020 (crt) (Entered: 12/30/2020)