

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

April 22, 2022

Lyle W. Cayce
Clerk

No. 21-50250

TUJUAN ESTAISYO SESSION,

Plaintiff—Appellant,

versus

CHARLES WARE, CO4; TDCJ HUGHES UNIT OFFICIALS;
ROBERT ARMOUR, CO5; SHANE DULSKI, CO4; HADLEY
HERRING, *Lieutenant*; FREDERICK D. HARRIS, *Sergeant*; BRITTANY
HARTLEY, *Correctional Officer*; JAMAL D. LARK, *Correctional Officer*;
KENDALL CALDWELL; DAWN STEWARD, *TDCJ Nurse*; LORI
DAVIS, *Director TDCJ*; FNU LOFTIN, *Superintendent / Warden Alfred
D. Hughes Unit*; JENNIFER ELDER, CO5,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 6:20-CV-1058

Before SMITH, HIGGINSON, and WILLETT, *Circuit Judges.*

PER CURIAM:*

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 21-50250

Tujuan Estaisyo Session, Texas prisoner # 01714978, seeks to appeal in forma pauperis (IFP) from the dismissal of his 42 U.S.C. § 1983 complaint. The district court found that Session had failed to exhaust his administrative remedies before filing suit as required by 42 U.S.C. § 1997e(a).

Session's brief does not address the exhaustion issue except to state that he exhausted the Texas prison system's two-step grievance process after he filed suit. Exhaustion must be completed prior to filing suit and is not excused if exhaustion is achieved while the suit is pending. *See Gonzalez v. Seals*, 702 F.3d 785, 788 (5th Cir. 2012). Because Session identifies no nonfrivolous basis for challenging the dismissal of his action, the IFP motion is DENIED, and the appeal is DISMISSED as frivolous. *See Baugh v. Taylor*, 117 F.3d 197, 202 n.24 (5th Cir. 1997); 5TH CIR. R. 42.2. All of Session's outstanding motions are also DENIED.

This court's dismissal of the appeal as frivolous counts as a strike under 28 U.S.C. § 1915(g). *See McGarran v. Alford*, 783 F.3d 584, 584-85 (5th Cir. 2015). Session has a prior strike. *See Session v. Pacheco*, No. 3:11-CV-3448 (N.D. Tex. Apr. 9, 2012) (dismissal as frivolous under § 1915(e)(2)(B)). Accordingly, Session is WARNED that, if he accumulates three strikes, he will be barred from proceeding 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* 28 U.S.C. § 1915(g).

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

April 22, 2022

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing
or Rehearing En Banc

No. 21-50250 Session v. Ware
USDC No. 6:20-CV-1058

Enclosed is a copy of the court's decision. The court has entered judgment under **FED. R. APP. P. 36**. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

FED. R. APP. P. 39 through **41**, and **5TH CIR. R. 35**, **39**, and **41** govern costs, rehearings, and mandates. **5TH CIR. R. 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following **FED. R. APP. P. 40** and **5TH CIR. R. 35** for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

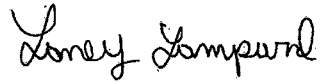
Direct Criminal Appeals. **5TH CIR. R. 41** provides that a motion for a stay of mandate under **FED. R. APP. P. 41** will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under **FED. R. APP. P. 41**. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you **MUST** confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

Sincerely,

LYLE W. CAYCE, Clerk

A handwritten signature in cursive script that reads "Laney L. Lampard".

By: _____
Laney L. Lampard, Deputy Clerk

Enclosure(s)

Mr. Jason T. Bramow
Mr. Tujan Estaisyo Session

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J U D G M E N T

This cause was considered on the record on appeal.