

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 05-2525

EDWIN WALKER,

Appellant

v.

WILLIAM GUZZI

On Appeal From the United States District Court
For the Eastern District of Pennsylvania
(D.C. Civ. No. 03-cv-6193)
District Judge: Honorable Eduardo C. Robreno

Submitted For Possible Dismissal Under 28 U.S.C. § 1915(e)(2)(B) or Summary Action
Under Third Circuit LAR 27.4 and I.O.P. 10.6
October 14, 2005

ROTH, FUENTES AND VAN ANTWERPEN, CIRCUIT JUDGES

(Filed: December 9, 2005)

OPINION

PER CURIAM

Edwin Walker appeals the District Court's order dismissing his complaint against

William Guzzi for lack of service. Walker filed a complaint against several defendants including William Guzzi. The District Court severed Walker's claims against Guzzi, created a new case, and subsequently dismissed the claims against Guzzi for lack of service.¹ Walker filed a timely notice of appeal.

Because Walker is proceeding in forma pauperis, we must we must analyze his appeal for possible dismissal pursuant to 28 U.S.C. § 1915(e)(2)(B). Under § 1915 (e)(2)(B), we must dismiss an appeal if the action (i) is frivolous or malicious, (ii) fails to state a claim upon which relief may be granted, or (iii) seeks monetary damages from a defendant with immunity. An action or appeal can be frivolous for either legal or factual reasons. Neitzke v. Williams, 490 U.S. 319, 325 (1989).

In his complaint, Walker alleged that Guzzi committed perjury. However, Guzzi is entitled to immunity as a witness. See Brisco v. LaHue, 460 U.S. 325 (1983). Moreover, to the extent that success on this claim would imply the invalidity of Walker's conviction, his claims are not cognizable. Heck v. Humphrey, 512 U.S. 477, 486-87 (1994). Thus, Walker's allegations against Guzzi fail to state a claim.

For the above reasons, we will dismiss the appeal under 28 U.S.C. § 1915(e)(2)(B)(ii). Walker's motion for the appointment of counsel is denied.

¹ Walker was unable to supply an address for Guzzi.