

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

No. 16-41407

United States Court of Appeals
Fifth Circuit

FILED

August 31, 2017

Lyle W. Cayce
Clerk

ARTHUR WILLIAMS,

Plaintiff-Appellant

v.

WILLIAM MORRISON, Transportation Officer-Beto Unit; RUTILLIO
CALLABERO, Transportation Officer-Beto Unit,

Defendants-Appellees

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:14-CV-884

Before DAVIS, CLEMENT, and OWEN, Circuit Judges.

PER CURIAM:*

Arthur Williams, Texas prisoner # 1036680, has applied for leave to proceed in forma pauperis (IFP) in this appeal from the district court's grant of summary judgment for Defendant William Morrison and its dismissal of Williams's civil rights complaint. By moving this court for leave to proceed IFP, Williams is challenging the determination that his appeal was not taken in good faith. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997). A motion

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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for leave to proceed IFP on appeal “must be directed solely to the trial court’s reasons for the certification decision.” *Id.* Our inquiry into good faith “is limited to whether the appeal involves legal points arguable on their merits (and therefore not frivolous).” *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (internal quotation marks and citations omitted).

Williams has failed to brief the legal merits of the district court’s certification decision and has, therefore, abandoned any challenge to it that he could have raised. *See Brinkmann v. Dallas County Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987); *Yohey v. Collins*, 985 F.2d 222, 225 (5th Cir. 1993). Even with proper briefing, Williams’s appeal is frivolous, as the summary judgment evidence established that he failed to exhaust his administrative remedies with respect to the claim that was the basis of the instant suit. *See Cowart v. Erwin*, 837 F.3d 444, 451 (5th Cir. 2016).

The motion for leave to proceed IFP is DENIED, and the appeal is DISMISSED as frivolous. *See* 5th Cir. R. 42.2; *Baugh*, 117 F.3d at 202 & n.24.

The dismissal of Williams’s appeal as frivolous counts as a strike for purposes of 28 U.S.C. § 1915(g). *See Adepegba v. Hammons*, 103 F.3d 383, 388 (5th Cir. 1996). Williams is WARNED that receiving two more strikes will preclude him from proceeding in forma pauperis in any civil action or appeal while he is incarcerated or detained in any facility unless he “is under imminent danger of serious physical injury.” § 1915(g).