

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

No. 16-50039

United States Court of Appeals
Fifth Circuit

FILED

May 4, 2017

Lyle W. Cayce
Clerk

MICHAEL HURTADO,

Plaintiff-Appellant

v.

HONORABLE JUDGE TRENTIN D. FARRELL; STATE ATTORNEY CATHY FERGUSON; ATTORNEY JEFFERY D. PARKER; HONORABLE JUDGE SHARON MACRAE; DISTRICT ATTORNEY JOHN CHARLES BUNK; ATTORNEY STEPHEN NICHOLAS,

Defendants-Appellees

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:15-CV-932

Before HIGGINBOTHAM, DENNIS, and GRAVES, Circuit Judges.

PER CURIAM:*

Michael Hurtado, Texas prisoner # 1445905, moves for leave to proceed in forma pauperis (IFP) in an appeal of the district court's dismissal of his 42 U.S.C. § 1983 complaint. His IFP motion is a challenge to the district court's certification that his appeal is not taken in good faith. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997).

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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In his § 1983 complaint, Hurtado alleged that the trial court judge, district attorney, and his defense counsel obstructed justice and engaged in misconduct in various ways related to his indictment and prosecution. We agree that Hurtado has not shown that he will present a nonfrivolous issue on appeal. *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Accordingly, we deny his motion for leave to proceed IFP and dismiss the appeal as frivolous. *See Baugh*, 117 F.3d at 202 n.24; 5TH CIR. R. 42.2.

The district court's dismissal of Hurtado's complaint and this court's dismissal of his appeal each count as a strike under 28 U.S.C. § 1915(g). *See Adepegba v. Hammons*, 103 F.3d 383, 387-88 (5th Cir. 1996). Hurtado also received two strikes in another recent appeal (No.16-10453). Because he has accumulated at least three strikes under § 1915(g), Hurtado is 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* § 1915(g).

MOTION FOR LEAVE TO PROCEED IFP DENIED; APPEAL DISMISSED; 28 U.S.C. § 1915(g) BAR IMPOSED.