

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

No. 16-50977

United States Court of Appeals
Fif h Circuit

FILED

June 27, 2017

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOHN HENRY SPIVEY, JR.,

Defendant-Appellant

Appeals from the United States District Court
for the Western District of Texas
USDC No. 5:13-CV-478
USDC No. 5:09-CR-558-4

Before OWEN, ELROD, and COSTA, Circuit Judges.

PER CURIAM:*

John Henry Spivey, Jr., federal prisoner # 10158-002, requests leave to appeal in forma pauperis (IFP) from the district court’s denial of his motion to “revive” a prior appeal. Spivey’s motion was “unauthorized and without a jurisdictional basis.” *See United States v. Early*, 27 F.3d 140, 141 (5th Cir. 1994). His appeal from the denial of this motion is frivolous. *See Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983). Because Spivey’s appeal fails to present a nonfrivolous issue, his motion for IFP is DENIED. *See Baugh v.*

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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Taylor, 117 F.3d 197, 202 & n.24 (5th Cir. 1997). The appeal is DISMISSED as frivolous. 5TH CIR. R. 42.2.