

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

United States Court of Appeals
Fifth Circuit

FILED

December 28, 2018

Lyle W. Cayce
Clerk

No. 18-10309

MARK EUGENE ENGLE,

Plaintiff-Appellant

v.

HUNT COUNTY TEXAS COMMISSIONER; GREENVILLE MAYOR;
GREENVILLE CHIEF OF POLICE; FELICIA WHITE, Officer; STEVEN
WALDEN, Officer; JASON SMITH, Officer; WARREN MITCHELL, Officer;
NATHAN BAKER, Officer; KATHERINE FERGUSON, Attorney; JAMES
SMITH, Private Investigator; STEPHEN LILLEY, ADA,

Defendants-Appellees

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:17-CV-2213

Before OWEN, WILLETT, and OLDHAM, Circuit Judges.

PER CURIAM:*

Mark Eugene Engle, Texas prisoner # 1958430, moves for leave to proceed in forma pauperis (IFP) in this appeal from the dismissal of his 42 U.S.C. § 1983 complaint for damages and declaratory relief arising from the issuance of a search warrant in 2012 and from his narcotics conviction in 2014.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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Engle's IFP motion in this court constitutes a challenge to the district court's certification that the appeal is not taken in good faith. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997).

Engle does not show that his appeal raises legal points arguable on the merits and that it is therefore nonfrivolous. *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Therefore, we DENY the IFP motion and sua sponte DISMISS this frivolous suit. *See Baugh*, 117 F.3d at 202; *Howard*, 707 F.2d at 220; 5TH CIR. R. 42.2. Also, we DENY Engle's motion to appoint counsel.

The dismissal of Engle's complaint by the district court and the dismissal of this appeal as frivolous count as two strikes under 28 U.S.C. § 1915(g). *See Coleman v. Tollefson*, 135 S. Ct. 1759, 1763 (2015); *Adepegba v. Hammons*, 103 F.3d 383, 387-88 (5th Cir. 1996). Engle is WARNED that accumulating a third strike will preclude him from proceeding IFP 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. *See* § 1915(g).

APPEAL DISMISSED AS FRIVOLOUS; IFP MOTION DENIED; MOTION TO APPOINT COUNSEL DENIED; SANCTION WARNING ISSUED.