

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

December 11, 2020

Lyle W. Cayce
Clerk

No. 19-11076

MITCHELL WAGNER,

Plaintiff—Appellant,

versus

ARCHIE D. SCARBOROUGH; KEITH F. MEEKS; STANLEY J.
BALDWIN; RICHARD BURGESS; JAMES FINLEY; CLAYTON
WHEEDEN; TEXAS KAIROS ORGANIZATION,

Defendants—Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 1:15-CV-177

Before STEWART, GRAVES, and HIGGINSON, *Circuit Judges.*

PER CURIAM:*

Mitchell Wagner, Texas prisoner # 1543049, moves for leave to proceed in forma pauperis (IFP) in this appeal and moves for the appointment of counsel. By moving to appeal IFP, Wagner challenges the

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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certification that his appeal is not in good faith. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997).

The notice of appeal failed to identify an existing judgment or order from which Wagner is appealing, and Wagner has not identified a nonfrivolous issue on appeal. *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Accordingly, the motion for leave to appeal IFP is DENIED, and the appeal is DISMISSED as frivolous. *See Baugh*, 117 F.3d at 202 n.24; 5TH CIR. R. 42.2. Our dismissal of this appeal counts as one strike under 28 U.S.C. § 1915(g). *See Coleman v. Tollefson*, 135 S. Ct. 1759, 1763-64 (2015). Wagner is WARNED that if he accumulates three strikes, he will not be allowed to proceed IFP in any civil action or appeal filed while he is detained or incarcerated in any facility unless he is under imminent danger of serious physical injury. His motion for the appointment of counsel is DENIED.