

# United States Court of Appeals for the Fifth Circuit

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No. 23-50852  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

March 11, 2024

Lyle W. Cayce  
Clerk

ANTONIO J. NEGRON,

*Petitioner—Appellant,*

*versus*

BOBBY LUMPKIN, *Director, Texas Department of Criminal Justice,  
Correctional Institutions Division*; STATE OF TEXAS,

*Respondents—Appellees.*

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 1:23-CV-1238

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Before ELROD, HAYNES, and DOUGLAS, *Circuit Judges.*

PER CURIAM:\*

Antonio J. Negron, Texas prisoner # 02256555, seeks leave to proceed in forma pauperis on appeal from the district court's: (1) order finding that his "Motion for Correction of Sentence" was an unauthorized successive 28 U.S.C. § 2254 application and transferring it to this court; and (2) order denying his motion for reconsideration under Federal Rule of Civil

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\* This opinion is not designated for publication. See 5TH CIR. R. 47.5.

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Procedure 59(e). In his motion for correction of sentence, Negrón appeared to argue that he was incapable of committing one or both of the offenses leading to his convictions during the applicable time period alleged in his indictment. He sought correction of his sentence under, *inter alia*, former Federal Rule of Criminal Procedure 35(a).

By moving to proceed IFP on appeal, Negrón is challenging 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). An appeal is taken in good faith if it raises legal points that are arguable on the merits and thus nonfrivolous. *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Negrón's argument that the district court erred by failing to provide him notice of its intent to recharacterize his motion as a successive § 2254 application and an opportunity to withdraw the motion is misplaced, as it is undisputed that Negrón previously filed a § 2254 application. *See Castro v. United States*, 540 U.S. 375, 377 (2003). Negrón otherwise fails to address the district court's findings. By failing to do so, he has not identified a nonfrivolous argument that the district court erred in finding that his motion was an unauthorized successive § 2254 application and transferring it to this court. *See Howard*, 707 F.2d at 220.

Accordingly, we DENY the motion to proceed IFP on appeal and DISMISS Negrón's appeal as frivolous. *See Baugh*, 117 F.3d at 202 & n.24; 5th Cir R. 42.2. Negrón's motion for appointment of counsel is likewise DENIED.