

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

United States Court of Appeals  
Fifth Circuit

**FILED**

September 10, 2009

Charles R. Fulbruge III  
Clerk

\_\_\_\_\_  
No. 08-30548

Summary Calendar  
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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FRANCISCO B. LOPEZ,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Louisiana  
No. 2:93-CR-20046-2  
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Before DAVIS, SMITH, and DENNIS, Circuit Judges.

PER CURIAM:\*

Francisco Lopez, federal prisoner # 56053-079, was convicted in the Western District of Louisiana. At that time, he was serving a sentence in the Nor-

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\* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

thern District of Texas for a related drug conviction. He filed a motion pursuant to FED. R. CRIM. P. 36 seeking to have his Louisiana judgment corrected so that he can receive credit for the time served on his federal conviction in Texas before beginning his federal sentence in Louisiana. The district court denied the motion and Lopez's application to proceed in forma pauperis ("IFP") on appeal. Lopez now appeals the denial of IFP status.

A movant for leave to proceed IFP on appeal must show that he is a pauper and that the appeal is taken in good faith, i.e., that it presents a nonfrivolous issue. *See Carson v. Polley*, 689 F.2d 562, 586 (5th Cir. 1982). "Frivolous" is defined as "lack[ing] an arguable basis in law or fact." *Taylor v. Johnson*, 257 F.3d 470, 472 (5th Cir. 2001). If the appeal is frivolous, this court may dismiss it *sua sponte*. *Baugh v. Taylor*, 117 F.3d 197, 202 & n.24 (5th Cir. 1997); 5TH CIR. R. 42.2. A claim for time served before the date of a federal sentence is not cognizable in a proceeding pursuant to FED. R. CRIM. P. 36. *See United States v. Mares*, 868 F.2d 151, 151 (5th Cir.1989).

Lopez's appeal thus presents no non-frivolous issue. Accordingly, the motion to proceed IFP is DENIED, and the appeal is DISMISSED as frivolous. *See* 5TH CIR. R. 42.2.