

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

F I L E D

April 28, 2010

No. 09-10796
Summary Calendar

Lyle W. Cayce
Clerk

TRACEY D. GARRETT,

Plaintiff-Appellant

v.

CHUCK NORRIS, (Carlos Ray Norris); AARON NORRIS; BOB GORKIN;
MORRIS BROTHERS; CLERANCE GILYARD; ET AL,

Defendants-Appellees

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:09-CV-415

Before JOLLY, WIENER, and ELROD, Circuit Judges.

PER CURIAM:*

Plaintiff-Appellant Tracey Demark Garrett, federal prisoner # 31079-077, seeks leave to appeal in forma pauperis (IFP) after the district court denied his IFP motion and certified that his appeal was not taken in good faith. Our inquiry into whether the appeal is taken in good faith "is limited to whether the appeal involves legal points arguable on their merits (and therefore not frivolous)." *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (internal

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

quotation marks and citations omitted). Accordingly, Garrett's IFP motion should have been "directed solely to the trial court's reasons for the certification decision." *Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997). Instead, Garrett asserts only that he is indigent. He fails to contend or show that he could present any nonfrivolous on appeal. The record reflects that Garret's action was untimely, duplicative, and wholly frivolous. *See See Wilson v. Lynaugh*, 878 F.2d 846, 850 (5th Cir. 1989). His IFP motion is denied, and his appeal is dismissed as frivolous. *See Howard*, 707 F.2d at 220; 5TH CIR. R. 42.2.

The dismissal of this appeal and the district court's dismissal as frivolous count as two strikes under 28 U.S.C. § 1915(g). *See Adepegba v. Hammons*, 103 F.3d 383, 387-88 (5th Cir. 1996). Garrett previously incurred two strikes, and we previously warned him that he would be barred from proceeding IFP if he made additional frivolous filings. *See Garrett v. Norris*, No. 02-10440 (5th Cir. Dec. 9, 2003) (unpublished decision, dismissing appeal as frivolous and issuing sanction warning). Accordingly, Garrett is now barred from proceeding in forma pauperis in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. *See* § 1915(g).

IFP MOTION DENIED; APPEAL DISMISSED; 28 U.S.C. § 1915(g) BAR IMPOSED.