

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

United States Court of Appeals
Fifth Circuit

FILED

January 19, 2010

No. 09-30288

Summary Calendar

Charles R. Fulbruge III
Clerk

CHESTER MATTHEWS,

Plaintiff-Appellant

v.

CORRECTIONS CORP OF AMERICA; TIM WILKINSON; TIM MORGAN;
ANGEL A MARTIN; VIRGIL LUCAS; ET AL,

Defendants-Appellees

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 1:08-CV-921

Before DAVIS, SMITH and DENNIS, Circuit Judges.

PER CURIAM:*

Chester Matthews, Louisiana prisoner # 383196, has filed a motion for leave to proceed in forma pauperis (IFP) on appeal. The district court denied Matthews's IFP motion and certified that the appeal was not taken in good faith. By moving for IFP status, Matthews is challenging the district court's certification. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Aside from conclusional allegations, Matthews does not challenge the district court's determination that he failed to present an arguable or nonfrivolous issue for appeal. In his motion, Matthews merely asserts that it was error for the district court to dismiss his complaint as frivolous and deny IFP without conducting any investigation into the facts of the case, especially in light of his pro se status. Matthews devotes a majority of his brief to his request for appointment of counsel. He reasserts the plethora of allegations he asserted in his complaint regarding the conditions of confinement at the Winn Correctional Center. However, his allegations are general and conclusory.

Matthews has not shown that the district court's certification was incorrect. The instant appeal is without arguable merit and is thus frivolous. Accordingly, Matthews's IFP motion is denied. *See Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983). His appeal is dismissed as frivolous. *See* 5TH CIR. R. 42.2. Matthews's motion for appointment of counsel is denied as well.

The district court's dismissal of Matthews's complaint as frivolous and the dismissal of this appeal as frivolous count as strikes for purposes of 28 U.S.C. § 1915(g). *See Adepegba v. Hammons*, 103 F.3d 383, 388 (5th Cir. 1996). Matthews is cautioned that if he accumulates three strikes under § 1915(g), he will no longer be allowed to proceed IFP 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).

MOTIONS DENIED; APPEAL DISMISSED; SANCTION WARNING ISSUED.