

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

F I L E D
March 24, 2011

No. 10-10664
Summary Calendar

Lyle W. Cayce
Clerk

BURRELL JOHNSON, JR.,

Plaintiff-Appellant

v.

ROSIE M. JACKSON,

Defendant-Appellee

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:10-CV-790

Before HIGGINBOTHAM, SMITH and HAYNES, Circuit Judges.

PER CURIAM:*

Burrell Johnson, Jr., Texas prisoner # 243195, moves this court to proceed in forma pauperis (IFP) in this appeal from the district court's dismissal of his 42 U.S.C. § 1983 complaint for failure to state a claim upon which relief may be granted. The district court denied his request to proceed IFP on appeal, certifying that the appeal was not taken in good faith. Johnson's IFP motion in this court is a challenge to 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. 1992).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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As Johnson has not adequately addressed the reasons for the district court's certification decision, it is the same as if he had not challenged that decision. *See Brinkmann v. Dallas County Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987); *Baugh*, 117 F.3d at 202. Because Johnson has not shown that he will present any nonfrivolous issue on appeal, his motion for leave to proceed IFP is denied and this appeal is dismissed as frivolous. *See Baugh*, 117 F.3d at 202 n.24; *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983); 5TH CIR. R. 42.2.

The district court's dismissal of Johnson's § 1983 complaint for failure to state a claim and our dismissal of this appeal as frivolous both count as strikes for purposes of 28 U.S.C. § 1915(g). *See Adepegba v. Hammons*, 103 F.3d 383, 387-88 (5th Cir. 1996). Johnson is cautioned that if he accumulates three strikes under § 1915(g), he will not be able 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).

IFP MOTION DENIED; APPEAL DISMISSED; SANCTION WARNING ISSUED.