

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**FILED**

August 17, 2012

Lyle W. Cayce  
Clerk

No. 11-51161  
Summary Calendar

MARK ANTHONY ZAVALA,

Plaintiff-Appellant

v.

SENATOR JOHN WHITMIRE; BRYAN COLLIER, Division Director Parole Division; BRAD LIVINGSTON, Executive Director Texas Department of Criminal Justice; NORMA GREENFIELD, Region IV Director,

Defendants-Appellees

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 5:10-CV-611

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Before JOLLY, ELROD, and GRAVES, Circuit Judges.

PER CURIAM:<sup>\*</sup>

Mark Anthony Zavala, Texas prisoner # 492723, moves this court for leave to proceed in forma pauperis (IFP) in his appeal of the district court's denial of his motion for reconsideration of the dismissal of his 42 U.S.C. § 1983 civil rights lawsuit. By moving for IFP status here, Zavala is challenging the district court's certification that his appeal is not taken in good faith. *See Baugh v. Taylor*, 117

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 11-51161

F.3d 197, 202 (5th Cir. 1997); FED. R. APP. P. 24(a). Zavala's brief on appeal contends that his constitutional rights were violated. He does not address, however, the district court's certification that his appeal was not taken in good faith, nor does he address any of the district court's reasons for its certification decision. *See Baugh*, 117 F.3d at 202. Accordingly, his challenge to the district court's certification decision is deemed abandoned. *See Brinkmann v. Dallas County Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987). Additionally, Zavala has not shown that his appeal involves "legal points arguable on their merits (and therefore not frivolous)." *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Therefore, Zavala's motion for leave to proceed IFP on appeal is DENIED, and his appeal is DISMISSED as frivolous. *See Baugh*, 117 F.3d at 202 & n.24; 5TH CIR. R. 42.2.

The dismissal of Zavala's suit by the district court and the dismissal of his appeal count as strikes pursuant to 28 U.S.C. § 1915(g). *See Adepegba v. Hammons*, 103 F.3d 383, 385-87 (5th Cir. 1996). Thus, Zavala 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).