

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

United States Court of Appeals  
Fifth Circuit

**FILED**

December 19, 2012

Lyle W. Cayce  
Clerk

\_\_\_\_\_  
No. 12-10303

Summary Calendar  
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MICHAEL ANTHONY DAVIS,

Plaintiff-Appellant

v.

KAREN L. COLLINS; TERRIL L. LASSITER; CHRISE WOLFE, Assistant United States Attorney; MICHAEL J. WORLEY, Assistant United States Attorney,

Defendants-Appellees

\_\_\_\_\_  
Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:12-CV-92  
\_\_\_\_\_

**ON PETITION FOR REHEARING**

Before CLEMENT, ELROD, and GRAVES, Circuit Judges.

PER CURIAM:\*

We construe the filing by Michael Anthony Davis, federal prisoner # 33896-177, as a petition for panel rehearing. The petition is GRANTED, our prior opinion is WITHDRAWN, and this opinion is SUBSTITUTED therefor.

Davis was convicted in 2005 of conspiring to possess and distribute cocaine base and distributing cocaine base and was sentenced to 360 months of

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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imprisonment. In February 2012, Davis filed a complaint under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), seeking damages and challenging alleged errors that occurred at trial and sentencing. The district court denied relief but granted Davis leave to proceed in forma pauperis (IFP) on appeal.

Davis's protestations to certain qualifying dismissals (strikes) under 28 U.S.C. § 1915(g) identified in our prior opinion, although correctly attributable to another prisoner named Michael Anthony Davis, do not provide grounds for the relief he seeks. Davis has in fact accumulated three strikes. On at least three prior occasions while incarcerated, Davis brought a civil action or appeal in a court of the United States that was dismissed as frivolous, malicious, or for failure to state a claim upon which relief could be granted. § 1915(g); see *Davis v. United States*, 4:11-cv-00064-Y (N.D. Tex. July 6, 2011) (unpublished); *Davis v. United States*, 5:10-cv-01136-HE, 2011 WL 693639 at \*1 (W.D. Okla. Feb. 18, 2011) (unpublished); and *Davis v. United States*, 426 F. App'x 648, No. 11-6072, 2011 WL 2321453 at \*1 (10th Cir. June 14, 2011). Further, Davis has not alleged, nor does the record reflect, that he is "under imminent danger of serious physical injury." § 1915(g).

Accordingly, Davis's IFP status is decertified, and the appeal is dismissed. Davis has 15 days from the date of this opinion to pay the full appellate filing fee to the clerk of the district court, should he wish to reinstate his appeal.

REHEARING GRANTED; PREVIOUS OPINION WITHDRAWN; IFP DECERTIFIED; APPEAL DISMISSED.