

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

No. 17-40123

United States Court of Appeals
Fif h Circuit

FILED

November 30, 2017

Lyle W. Cayce
Clerk

JOHNNY LEE READER,

Plaintiff-Appellant

v.

UNITED STATES OF AMERICA,

Defendant-Appellee

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:16-CV-37

Before DENNIS, SOUTHWICK, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Johnny Lee Reader, federal prisoner # 17905-078, has applied for leave to appeal in forma pauperis (IFP) from the district court's order granting in part and denying in part his motion requesting the return of property. By moving to proceed IFP, Reader challenges the district court's determination that his appeal has not been brought in good faith. *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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

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Reader asserts that he is challenging the constitutionality and subject matter jurisdiction of the Government's seizure of his property. However, his abbreviated IFP filing contains no argument on the issue whether the forfeiture comported with due process, which was the only issue for the district court's review. *See United States v. Robinson*, 434 F.3d 357, 362 (5th Cir. 2005). Reader has therefore abandoned any challenge to the district court's determination on that issue, *see Brinkmann v. Dallas County Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987), and he has thus failed to demonstrate that his appeal raises legal points that are arguable on the merits and thus nonfrivolous. *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Because Reader has not shown that his appeal involves a nonfrivolous issue, we deny his motion to proceed IFP on appeal and dismiss the appeal as frivolous. *See Baugh*, 117 F.3d at 202 & n.24; 5TH CIR. R. 42.2.

The dismissal of this appeal as frivolous counts as a strike for purposes of 28 U.S.C. § 1915(g). *See Adepegba v. Hammons*, 103 F.3d 383, 387-88 (5th Cir. 1996). Reader is warned that if he accumulates three strikes under § 1915(g) he will not 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).

IFP MOTION DENIED; APPEAL DISMISSED; SANCTION WARNING ISSUED.