

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

LARRY DOVER, #217 258,)	
)	
Plaintiff,)	
)	Civil Action No. 2:10-CV-499-ID
v.)	(WO)
)	
OFFICER RODERICK UNDERWOOD,)	
)	
Defendant.)	

ORDER

This cause is now before the Court on Plaintiff’s Notice of Appeal which this Court construes to contain a request for a certificate of appealability and a motion to proceed on appeal in forma pauperis. (Doc. #17).

Title 28 U.S.C.A. § 1915(a) provides that “[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.” In making this determination as to good faith, a court must use an objective standard, such as whether the appeal is “frivolous,” *Coppedge v. United States*, 369 U.S. 438, 445, 82 S. Ct. 917, 921 (1962), or “has no substantive merit.” *United States v. Bottoson*, 644 F.2d 1174, 1176 (5th Cir. Unit B May 15, 1981) (per curiam), *cert. denied*, 454 U.S. 903, 102 S. Ct. 411 (1981)¹; *see also Rudolph v. Allen*, 666 F.2d 519, 520 (11th Cir. 1982) (per curiam), *cert. denied*, 457

¹ See *Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981) (*en banc*) (adopting as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981).

U.S. 1122, 102 S. Ct. 2938 (1982); *Morris v. Ross*, 663 F.2d 1032 (11th Cir. 1981), *cert. denied*, 456 U.S. 1010, 102 S. Ct. 2303 (1982).

The Plaintiff's complaint was initially dismissed without prejudice to allow the Plaintiff to proceed with his claims before the state court where the Plaintiff had also filed. The Plaintiff's apparent basis for his current appeal is that he no longer has a case pending in state court. (Doc. #17). Applying the "good faith" standard set forth above, the Court finds that the Plaintiff's appeal is without an appropriate legal or factual basis and, accordingly, is frivolous and not taken in good faith. *See, e.g., Rudolph v. Allan, supra; Brown v. Pena*, 441 F. Supp. 1382 (S.D. Fla. 1977), *aff'd without opinion*, 589 F.2d 1113 (5th Cir. 1979).

Accordingly, it is CONSIDERED and ORDERED

1. that the Plaintiff's request for a certificate of appealability (Doc. #17) be and the same is hereby DENIED;
2. that the Plaintiff's Motion to Proceed in Forma Pauperis (Doc. #17) be and the same is hereby DENIED; and
3. that the Plaintiff's appeal be and the same is hereby CERTIFIED, pursuant to 28 U.S.C.A. § 1915(a), as not taken in good faith.

Done this the 18th day of October, 2010.

/s/ Ira DeMent
SENIOR UNITED STATES DISTRICT JUDGE