

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

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|-----------------------------|---|-------------------------------|
| JOSEPH THOMPSON, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | CIVIL ACTION NO. 3:11cv288-ID |
| |) | (WO) |
| BEN C. REEVES, JR., et al., |) | |
| |) | |
| Defendants. |) | |

ORDER

This cause is now before the Court on Plaintiff’s Notice of Appeal, (Doc. #7), and the Plaintiff’s Motion for Leave to Appeal in Forma Pauperis, (Doc. #9).

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

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).

denied, 456 U.S. 1010, 102 S. Ct. 2303 (1982).

The Plaintiff wishes to appeal this Court's previous order dismissing his case without prejudice. (Doc. #5). The Court has reviewed the file in this case and is unable to find a valid basis for appeal. Applying the "good faith" standard set forth above, the Court finds that the Plaintiff's appeal is without a 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 Motion for Leave to Appeal in Forma Pauperis, (Doc. #9), be and the same is hereby DENIED; and

2. 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 15th day of July, 2011.

/s/ W. Keith Watkins
CHIEF UNITED STATES DISTRICT JUDGE