

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

DARNELL NOLLEY,

• • • • •

Plaintiff,

100

V.

No. 5:15-cv-00075-CAR-MSH

CYNTHIA NELSON, *et al.*,

• • •

Defendants.

ORDER

Plaintiff Darnell Nolley has moved to appeal *in forma pauperis*. Mot. & Aff. for Leave to Appeal *In Forma Pauperis*, ECF No. 156. After reviewing the record, the Court enters the following Order.

Plaintiff seeks to appeal the judgment in favor of Defendants entered on September 22, 2017. *See* Notice of App., ECF No. 154. Applications to appeal *in forma pauperis* are governed by 28 U.S.C. § 1915 and Fed. R. App. P. 24. Under 28 U.S.C. § 1915,

(a)(1) [A]ny court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefore, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

(3) An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

Similarly, Fed. R. App. P. 24(a) provides:

(1) [A] party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court. The party must attach an

affidavit that:

- (A) shows . . . the party's inability to pay or to give security for fees and costs;
- (B) claims an entitlement to redress; and
- (C) states the issues that the party intends to present on appeal.

(2) If the district court denies the motion, it must state its reasons in writing.

Thus, the Court must make two determinations when faced with an application to proceed *in forma pauperis*. First, it must determine whether the plaintiff is financially able to pay the filing fee required for an appeal. Here, Plaintiff has submitted a renewed affidavit for leave to proceed *in forma pauperis*, but he did not submit an updated certified copy of his trust fund account statement because he states that the business office at the prison has been unresponsive to his request for a statement. *See Mot. & Aff. for Leave to Appeal In Forma Pauperis*, ECF No. 156. Regardless, Plaintiff's affidavit, along with his previous filings, demonstrate that he is unable to prepay the appellate filing fee.

Second, the Court must determine if the plaintiff has satisfied the good faith requirement. “[G]ood faith’ . . . must be judged by an objective standard.” *Coppedge v. United States*, 369 U.S. 438, 445 (1962). The plaintiff demonstrates good faith when he seeks review of a non-frivolous issue. *Id.* An issue “is frivolous if it is ‘without arguable merit either in law or fact.’” *Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002) (citations omitted). “Arguable means capable of being convincingly argued.” *Sun v. Forrester*, 939 F.2d 924, 925 (11th Cir. 1991) (quotation marks and citations omitted); *Carroll v. Gross*, 984 F.2d 392, 393 (11th Cir. 1993) (“[A] case is frivolous . . . when it appears the plaintiff ‘has little or no chance of success.’”) (citations omitted). “In

deciding whether an [*in forma pauperis*] appeal is frivolous, a district court determines whether there is ‘a factual and legal basis, of constitutional dimension, for the asserted wrong, however inartfully pleaded.’” *Sun*, 939 F.2d at 925 (citations omitted).

In this action, this Court granted summary judgment to Defendants on Plaintiff’s due process claim.¹ Order, Sept. 21, 2017, ECF No. 142. Although Plaintiff has not submitted a statement of the issues he intends to appeal, as is required by Fed. R. App. P. 24(a)(1)(C), this Court’s independent review of the issues addressed in the September 21, 2017, Order demonstrates that Plaintiff’s appeal is frivolous. In particular, Defendants were entitled to summary judgment because the undisputed facts demonstrated that Plaintiff’s placement in administrative segregation did not deprive him of a protected liberty interest. *See Turner v. Warden, GDCP*, 650 F. App’x 695, 700-01 (11th Cir. 2016) (per curiam). Moreover, to the extent that Plaintiff seeks to challenge on appeal the Court’s resolution of Plaintiff’s non-dispositive motions, a review of the orders resolving those motions does not reveal any non-frivolous issue for appeal. The appeal, therefore, is not brought in good faith. Consequently, Plaintiff’s application to appeal *in forma pauperis* is **DENIED**.

If Plaintiff wishes to proceed with his appeal, he must pay the entire \$505 appellate filing fee. Because Plaintiff has stated that he cannot pay the fee immediately, he must pay using the partial payment plan described under 28 U.S.C. § 1915(b). Pursuant to

¹In an earlier order, a number of Plaintiff’s other claims were dismissed, leaving only his due process claims. *See* Order, June 24, 2016, ECF No. 65. Plaintiff was previously denied leave to appeal that order *in forma pauperis*. *See* Order 5-6, Aug. 16, 2016, ECF No. 78.

§ 1915(b), the prison account custodian where Plaintiff is confined shall cause to be remitted to the Clerk of this Court monthly payments of 20% of the preceding month's income credited to Plaintiff's account (to the extent the account balance exceeds \$10) until the \$505 appellate filing fee has been paid in full. Checks should be made payable to "Clerk, U.S. District Court." The Clerk of Court is **DIRECTED** to send a copy of this Order to the custodian of the prison in which Plaintiff is incarcerated.

SO ORDERED, this 5th day of December, 2017.

S/ C. Ashley Royal
C. ASHLEY ROYAL, SENIOR JUDGE
UNITED STATES DISTRICT COURT