

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

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| DAVID W. GREGORY, Inmate #B-63881, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | CIVIL NO. 07-669-JPG |
| |) | |
| VERENIO SANTOS, et al., |) | |
| |) | |
| Defendants. |) | |

MEMORANDUM AND ORDER

This action is before the Court on Plaintiff's Motion for Leave to Appeal *in forma pauperis* (Doc. 66). A federal court may permit a party to proceed on appeal without full pre-payment of fees provided the party is indigent and the appeal is taken in good faith. 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3). A frivolous appeal cannot be made in good faith. *Lee v. Clinton*, 209 F.3d 1025, 1026-27 (7th Cir. 2000). The test for determining if an appeal is in good faith or not frivolous is whether any of the legal points are reasonably arguable on their merits. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989) (citing *Anders v. California*, 386 U.S. 738 (1967)); *Walker v. O'Brien*, 216 F.3d 626, 632 (7th Cir. 2000).

Here, Plaintiff is attempting to appeal Magistrate Judge Clifford J. Proud's order denying Plaintiff appointment of counsel. This is not a final judgment from which Plaintiff may appeal as of right. It is an order by a magistrate judge of a non-dispositive motion, and as such, the proper course for Plaintiff to follow is to file an objection with this Court, as outlined in Rule 72(b)(2) of the Federal Rules of Civil Procedure. Because Plaintiff has no right to appeal this order to the Seventh Circuit, his attempt to do so is legally frivolous. Accordingly, the Court **DENIES** the Motion for Leave to Appeal *in forma pauperis* (Doc. 66).

IT IS SO ORDERED.
DATED: May 27, 2009

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE