

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

CHRISTOPHER H. MCCOY, )

Plaintiff, )

vs. )

ERIC T. EDMISTER, )

Defendant. )

Case No. 14-cv-01379-JPG-DGW

**MEMORANDUM AND ORDER**

This matter comes before the Court on Plaintiff’s Motion (Doc. 129) to Enter the Record for Inability to Pay on Appeal which the Court is construing as a Motion to Appeal *in forma pauperis*. Although the plaintiff is requesting that this Court and the United States Court of Appeals for the Seventh Circuit waive all fees, there are no provisions that would provide for a waiver of fees with regard to this cause of action.

A court can deny a qualified plaintiff leave to file *in forma pauperis* if – before or after the notice of appeal is filed- the court certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed *in forma pauperis* and states in writing its reasons. Fed. R. App. P. 24(a)(3)(A). When assessing a petition to proceed *in forma pauperis*, a district court should inquire into the merits of the petitioner’s claims, and if the court finds them to be frivolous, it should deny leave to proceed *in forma pauperis*. *Lucien v. Roegner*, 682 F.2d 625, 626 (7th Cir. 1982).

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).

In this matter, the plaintiff is appealing this Court's grant of summary judgment based on qualified immunity. The defendants were entitled to qualified immunity because their actions did not rise to a violation of Plaintiff's constitutional rights. As such, there are no legal points that could be reasonably arguable on their merits and the Court finds that the plaintiff is not otherwise entitled to proceed *in forma pauperis*.

The Court also notes that the plaintiff has filed a Motion (Doc. 128) to Transfer Record to the Court of Appeals. The Court believes that the plaintiff is attempting to comply with the Rule 10 Letter at docket 126. This motion is not sufficient to meet the requirements of Rule 10 and the plaintiff is directed to review the instructions contained in the Rule 10 letter. The Court notes that the Transmission of the Short Record to the Court of Appeals was performed on December 27, 2016. Therefore, Plaintiff's Motion (Doc. 128) to Transfer Record is **MOOT**.

Therefore, the Court **CERTIFIES** that this appeal is not taken in good faith and accordingly **DENIES** the Plaintiff's Motion for Leave to proceed on appeal *in forma pauperis* (Doc. 129). The Clerk of Court is **DIRECTED** to send a copy of this order to the United States Court of Appeals for the Seventh Circuit.

**IT IS SO ORDERED.**

**DATED:** 1/12/2017

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