

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

PABLO TORRES-FLORES,

Plaintiff,

v.

MICHAEL D. SCOTT,

Defendant.

Case No. 3:16-cv-01253-JPG-RJD

MEMORANDUM AND ORDER

Plaintiff Torres-Flores has filed a motion for leave to appeal *in forma pauperis*. (ECF No. 38.) A federal court may permit a party to proceed on appeal without full pre-payment of fees provided that the party is indigent and the appeal is taken in good faith. 28 U.S.C. § 1915(a)(1) & (3); FED. R. APP. P. 24(a)(3)(A). 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 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).

Torres-Flores’s appeal is frivolous, so the Court cannot grant his motion. As more fully explained in this Court’s order dismissing his case (ECF No. 31), Torres-Flores claims that he suffers from a serious medical condition because a finger on his right hand locks up at times. But at his deposition, he testified that he was able to perform numerous activities with his right hand without issue—including shaving, writing, preparing meals, going to the gym, delicately and precisely operating a sewing machine at his work assignment at the prison, and more. (Torres-Flores Dep. 51:8–52:12, 15:7-22, 16:1-7, 11-24, ECF No. 22-4.) He also testified that his primary issue is not with pain, but rather with the finger locking up sometimes. (*Id.* at 29:21-23.)

Torres-Flores then contradicted that testimony in his objections to the magistrate judge's report and recommendations, and the Court will not presume that Torres-Flores committed perjury at his deposition. No reasonable person could argue that Torres-Flores's issue constitutes a serious medical condition, so the Court **DENIES** his motion for leave to appeal *in forma pauperis*. (Doc. 38.)

IT IS SO ORDERED.

DATED: JULY 10, 2018

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