

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION**

JAMES S. FELKNOR

CIVIL ACTION NO. 10-1399

VERSUS

JUDGE ROBERT G. JAMES

UNITED STATES OF AMERICA, ET AL.

MAG. JUDGE KAREN L. HAYES

RULING

Pending before the Court is an Application to Proceed *In Forma Pauperis* on appeal (“Motion to Proceed IFP”) [Doc. No. 10] filed by Plaintiff James S. Felknor (“Felknor”).

A. Background

Felknor has filed eight civil rights complaints in the Western District of Louisiana in the last few months. *See* [Doc. No. 3]. The Court has determined that, in each of the cases, including this one, Felknor has failed to present legally viable claims.

On July 13, 2010, in another lawsuit filed by Felknor, Civil Action No. 10-1020, the Court issued a Judgment advising Felknor that “the Clerk of Court [will] decline to file any civil complaint submitted by [him] unless the complaint has first been presented to a district judge of this court and the judge has specifically authorized in writing that the complaint may be filed.” *See* [Doc. No. 2].

On September 8, 2010, Felknor presented the Complaint in this matter to the Clerk of Court without paying the filing fees of the Court or submitting a motion to proceed *in forma pauperis*. The Clerk of Court referred the Complaint to this Court for review. After review, the

Court issued an order on October 6, 2010. [Doc. No. 3]. The Court determined that Felknor appeared to contest the denial of his veterans' benefits, but under 38 U.S.C. §511(a), federal courts lack the authority to review Veteran Administration decisions regarding individual benefit claims. Having determined that it lacked subject matter jurisdiction to review Felknor's Complaint, the Court dismissed Felknor's Complaint.

In response to the Court's October 6, 2010 Order, Felknor filed a Notice of Appeal [Doc. No. 4] and a Motion to Appoint Counsel [Doc. No. 5] on October 20, 2010. The Court denied Felknor's Motion to Appoint Counsel on October 22, 2010. [Doc. Nos. 7 & 8].

On October 25, 2010, Felknor filed this Motion to Proceed IFP.

Under Federal Rule of Appellate Procedure 24(a), a party "who desires to appeal *in forma pauperis* must file a motion in the district court" and "attach an affidavit that . . . shows in . . . detail . . . (A) 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." If the Court denies the motion, it must issue written reasons. FED. R. APP. P. 24(a)(2). Even if the party has previously been permitted to proceed *in forma pauperis* at the district court level, the district court can deny the party leave to appeal *in forma pauperis* if "the district court--before or after the notice of appeal is filed--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 for the certification or finding." FED. R. APP. P. 24(a)(3)(A). Likewise, under 28 U.S.C. § 1915(a)(3), "[a]n appeal may not be taken [by a prisoner or nonprisoner] *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith."

In this case, for the reasons stated in the Court's October 6, 2010 Order and in this

Ruling, the Court finds that Felknor's Complaint does not raise an issue of even arguable merit. Therefore, the Court hereby certifies that his appeal is not taken in good faith under 28 U.S.C. § 1915(a)(3) and FED. R. APP. P. 24(a)(3). *See Baugh v. Taylor*, 117 F.3d 197, 200, 202 (5th Cir. 1997); *see also Champluvier v. Couch*, 309 Fed. App'x 902, 2009 WL 320829, at *1-2 (5th Cir. Feb. 10, 2009); *In re Asheru*, No. 09-11058, 2010 WL 3680935, at *1 (5th Cir. Sept. 14, 2010). Felknor's Motion to Proceed IFP is DENIED, and he shall pay the filing fee of \$455.00 if he wishes to proceed with his appeal. Felknor may challenge the Court's finding pursuant to *Baugh* by filing a separate motion to proceed IFP on appeal with the Clerk of Court, United States Court of Appeals for the Fifth Circuit, within 30 days of service of this order. FED. R. APP. P. 24(a)(5).

The Clerk of Court shall not accept for filing any further pleadings submitted by Felknor in this case.

MONROE, LOUISIANA, this 29th day of October, 2010.


ROBERT G. JAMES
UNITED STATES DISTRICT JUDGE