

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-10759
Conference Calendar

CLIFFORD E. TAYLOR,

Plaintiff-Appellant,

versus

JAMES SUTTON, Sergeant,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 7:98-CV-96-R

October 17, 2000

Before SMITH, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Clifford E. Taylor, Texas prisoner # 727610, seeks leave to proceed in forma pauperis ("IFP") in the appeal of the dismissal of his civil rights complaint. The district court certified, pursuant to 28 U.S.C. § 1915(a)(3), that Taylor's appeal was not taken in good faith. Taylor's motion for IFP is treated as a challenge to the district court's certification. See Baugh v. Taylor, 117 F.3d 197, 202 (5th Cir. 1997).

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Because Taylor fails to show that he will raise a meritorious issue on appeal, his motion to proceed IFP is DENIED. Taylor has not shown that the district court's denial of his motion for relief from judgment pursuant to Fed. R. Civ. P. 60(b) was so unwarranted as to constitute an abuse of discretion. See Seven Elves, Inc. v. Eskenazi, 635 F.2d 396, 402 (5th Cir. 1981). The district court did not err in certifying that an appeal would be frivolous. Accordingly, the appeal is DISMISSED as frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); Baugh, 117 F.3d at 202 n.24 (5th Cir. 1997); 5th Cir. R. 42.2.

The dismissal of this appeal counts as a strike for purposes of § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996). Taylor is WARNED that if he accumulates three strikes, he may not proceed IFP in any civil action or appeal while he is incarcerated or detained in any facility unless he is in imminent danger of serious physical injury. See § 1915(g).

IFP MOTION DENIED; APPEAL DISMISSED; SANCTIONS WARNING ISSUED.