

October 22, 2003

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-50492  
Conference Calendar

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GERALD DEWAYNE HOWARD,

Plaintiff-Appellant,

versus

GARY L. JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE,  
INSTITUTIONAL DIVISION, NFN GOINGS, Assistant Warden at the  
Sanchez Unit; NFN BENAVENTE, Officer, TDCJ Sanchez Unit; NFN  
OAXACA, Officer, TDCJ Sanchez Unit; NFN HOWERTON, Officer, TDCJ  
Sanchez Unit; NFN SERNA, Sergeant, TDCJ Sanchez Unit; NFN CHAVEZ,  
Officer, TDCJ Sanchez Unit,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. EP-02-CV-19-DB  
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Before KING, Chief Judge, and JOLLY and STEWART, Circuit Judges.

PER CURIAM:\*

Gerald Dewayne Howard, Texas prisoner # 1034561, has filed a  
motion for leave to proceed *in forma pauperis* (IFP) on appeal  
following the district court's dismissal of his 42 U.S.C. § 1983  
action for failure to state a claim pursuant to 28 U.S.C.  
§ 1915(e)(2)(B)(ii) and 42 U.S.C. § 1997e(c)(2). By moving for

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\* 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that this opinion should not be published and is not precedent  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.

IFP status, Howard is challenging the district court's certification that IFP status should not be granted on appeal because his appeal is not taken in good faith. See Baugh v. Taylor, 117 F.3d 197, 202 (5th Cir. 1997).

Howard has not shown that he will raise a nonfrivolous issue on appeal. Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983); Days v. Johnson, 322 F.3d 863, 866 (5th Cir. 2003). Because Howard has not shown that the district court erred in certifying that his appeal is not taken in good faith, his request for IFP status is DENIED, and his appeal is DISMISSED as frivolous. See Baugh, 117 F.3d at 202 & n.24; 5TH CIR. R. 42.2.

Howard is cautioned that the district court's dismissal of this action, and this court's dismissal of this appeal, both count as "strikes" pursuant to 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 388 (5th Cir. 1996). Howard is advised that if he accumulates three strikes, he will be barred from bringing a civil action or an appeal proceeding IFP unless he is under imminent danger of serious physical injury. See 28 U.S.C. § 1915(g).