

April 20, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-60564
Conference Calendar

CHARLES W. JOHNSON,

Plaintiff-Appellant,

versus

CHRISTOPHER B. EPPS, COMMISSIONER, MISSISSIPPI DEPARTMENT OF
CORRECTIONS; DONALD A. CABANA, Superintendent; J. J. STREETER,
Warden, Unit 32; PAMELA ROBINSON, Associate Warden, Unit 32;
LETITIA ROACH, Classification Director; GENE BOOKER, Captain,
Unit Administrator, Unit 32-E; SAMUEL WEBB, Unit 32-E Case
Manager; DEAN EPPS, Unit Case Manager, Unit 32-E,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 4:04-CV-125-PA

Before JONES, SMITH, and PRADO, Circuit Judges.

PER CURIAM:*

Charles W. Johnson, former Mississippi prisoner # 42204 and
current federal prisoner # 05292-043, has filed a motion for
leave to proceed in forma pauperis (IFP) on appeal. The district
court denied Johnson's FED. R. CIV. P. 60(b) motion for relief
from the dismissal of his 42 U.S.C. § 1983 complaint. The

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that this opinion should not be published and is not precedent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

district court denied Johnson's motion to appeal IFP and certified that the appeal was not taken in good faith. By moving for IFP, Johnson is challenging the district court's certification. See Baugh v. Taylor, 117 F.3d 197, 202 (5th Cir. 1997).

Johnson has failed to show that the district court abused its discretion by denying his FED. R. CIV. P. 60(b) motion. See Seven Elves, Inc. v. Eskenazi, 635 F.2d 396, 402 (5th Cir. 1981). The instant appeal is without arguable merit and is thus frivolous. Accordingly, Johnson's request for IFP status is DENIED, and his appeal is DISMISSED. See Howard v. King, 707 F.2d 215, 219-220 (5th Cir. 1983); 5TH CIR. R. 42.2.

Johnson is cautioned that the dismissal of this appeal as frivolous counts as a strike under 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 385-87 (5th Cir. 1996). Johnson is also cautioned that if he accumulates three strikes under 28 U.S.C. § 1915(g), he may not proceed IFP in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. See 28 U.S.C. § 1915(g).

IFP MOTION DENIED; APPEAL DISMISSED; SANCTION WARNING ISSUED.