

FILED

August 21, 2007

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III
Clerk

No. 06-51244
Conference Calendar

JOHN W MELTON

Plaintiff-Appellant

v.

UNIVERSITY OF TEXAS MEDICAL BRANCH BOYD UNIT; TEXAS
DEPARTMENT OF CRIMINAL JUSTICE CORRECTIONAL
INSTITUTIONAL DIVISION BOYD UNIT; WARDEN II, BOYD UNIT BEN
BROWN; CAPTAIN HORTMAN; LSM III CONNIE HILL; VIRGINIA
BUCHANAN; LVN LYNDA SANCHES

Defendants-Appellees

Appeal from the United States District Court
for the Western District of Texas
USDC No. 6:06-CV-153

Before HIGGINBOTHAM, SMITH, and CLEMENT, Circuit Judges.

PER CURIAM:*

John W. Melton, Texas prisoner # 1168128, has filed a motion for leave to proceed in forma pauperis (IFP) on appeal. The magistrate judge denied Melton's motion to appeal IFP and certified that the appeal was not taken in

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

good faith.** By moving for IFP, Melton is challenging the district court's certification. See *Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997).

Failure to identify an error in the district court's analysis is the same as if the appellant had not appealed the judgment. *Brinkmann v. Dallas County Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987). Although pro se briefs are liberally construed, even pro se litigants must brief arguments in order to preserve them. *Yohey v. Collins*, 985 F.2d 222, 225 (5th Cir. 1993).

Melton offers only a conclusory assertion of perjured testimony at the Spears*** hearing to challenge the dismissal of his civil rights complaint. Melton has not shown that the magistrate judge's determination that his appeal would be frivolous was incorrect. The instant appeal is without arguable merit and is thus frivolous. Accordingly, Melton'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. Melton is reminded that he has three strikes under 28 U.S.C. § 1915(g). See *Adepegba v. Hammons*, 103 F.3d 383, 385-87 (5th Cir. 1996); *Melton v. Livingston*, No. 06-20097 (5th Cir. Jan. 18, 2007). Accordingly, 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 § 1915(g). We caution Melton that further frivolous filings may result in additional sanctions against him.

IFP DENIED; APPEAL DISMISSED; SANCTION WARNING ISSUED.

** Melton consented to the magistrate judge entering the final judgment in this case. See 28 U.S.C. § 636(c).

*** *Spears v. McCotter*, 766 F.2d 179 (5th Cir. 1985).