

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-5068  
Conference Calendar

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STEVEN D. BOB,

Plaintiff-Appellant,

versus

JIMMIE E. ALFORD ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 6:92cv290

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October 27, 1993

Before POLITZ, Chief Judge, and SMITH and WIENER, Circuit Judges.

BY THE COURT:

Steven D. Bob's motion seeking leave to appeal in forma pauperis (IFP), and his motion to withdraw his appeal without prejudice are DENIED, and the appeal is DISMISSED as frivolous. See 5th Cir. R. 42.2.

Bob's first application to this Court for IFP status, on appeal from the district court's dismissal of his 42 U.S.C. § 1983 civil rights action, was originally remanded by this Court for a finding regarding the timeliness of Bob's notice of appeal. The magistrate judge conducted two hearings to determine whether Bob timely filed his notice of appeal. After hearing testimony and accepting evidence, the magistrate judge found as a matter of fact that Bob's notice of appeal had not been filed within the

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time frame necessary to perfect a timely notice of appeal.\*

As the evidence in the record supports this conclusion, the original motion seeking leave to appeal IFP is DENIED and the appeal is DISMISSED. Bob's subsequent motion to withdraw his appeal without prejudice is also DENIED as moot.

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\* The magistrate judge found that "Bob delivered his notice of appeal . . . to the prison authorities for mailing on October 5, 1993 [sic] . . ." This is an obvious typographical error, as it is plain, from the context, that the magistrate judge meant October 5, 1992, and we so construe the finding.