

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-40326
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SAMUEL THOMAS TOWERTON,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA-L-96-32
- - - - -

February 3, 1997

Before KING, HIGGINBOTHAM and STEWART, Circuit Judges.

PER CURIAM:*

Samuel Thomas Towerton (federal inmate # 67847-079) has applied to this court for leave to appeal in forma pauperis (IFP) from the district court's order denying his 28 U.S.C. § 2255 motion to vacate. Towerton argues that he is entitled to relief because he was denied the effective assistance of counsel.

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

IT IS ORDERED that leave to appeal IFP is DENIED, because Towerton's appeal lacks arguable merit and is therefore frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, IT IS FURTHER ORDERED that the appeal is DISMISSED. See 5th Cir. R. 42.2.

If this court were to hold that a certificate of appealability (COA) is required in a case such as this, COA would be denied. See 28 U.S.C. § 2253(c). Towerton's motion for appointment of counsel is also DENIED.

IFP DENIED; APPEAL DISMISSED.