

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-10114
Conference Calendar

HAROLD CURTIS BIDDIE, ET AL.,

Plaintiffs,

HAROLD CURTIS BIDDIE; MALCOLM LOUIS JACKSON,

Plaintiffs-Appellants,

versus

LEE A. SPEARS; BRENDA R. WILKINSON; ALL DEFENDANTS,

Defendants-Appellees.

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Appeal from the United States District Court
for the Northern District of Texas
USDC No. 7-97-CV-241-X
- - - - -

April 19, 1999

Before JONES, SMITH, and DUHÉ, Circuit Judges.

PER CURIAM:*

Harold Curtis Biddie, Texas inmate # 488840, challenges the dismissal without prejudice of his civil rights complaint filed pursuant to 42 U.S.C. § 1983 for want of prosecution under Fed. R. Civ. P. 41(b). As requested, Malcolm Louis Jackson, Texas inmate # 655798, is not a party to this appeal, and his motion to join the appeal is DENIED as moot.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Biddie's appeal of the dismissal of his suit for want of prosecution is frivolous. See Fed. R. Civ. P. 41(b); McCullough v. Lynaugh, 835 F.2d 1126, 1127 (5th Cir. 1988). Therefore, his appeal is DISMISSED. See 5th Cir. R. 42.2. His motion for appointment of counsel is DENIED.

District courts have barred Biddie from proceeding in forma pauperis in accordance with 28 U.S.C. § 1915(g) unless he is under imminent danger of serious physical injury. It is not clear, however, that he was barred before he filed the instant appeal. He is now barred unquestionably. See § 1915(g); Adepegba v. Hammons, 103 F.3d 383, 388 (5th Cir. 1996); Biddie v. Meade, No. H-97-2726 (S.D. Tex. Oct. 20, 1997); Biddie v. Negbenebor, No. H-97-2375 (S.D. Tex. Nov. 20, 1997); see also Biddie v. Polk, No. 1:96 cv695 (E.D. Tex. Nov. 30, 1998); Biddie v. Gillard, No. H-97-2119 (S.D. Tex. June 9, 1998); Biddie v. Dale, No. H-97-2728 (S.D. Tex. June 16, 1998).

MOTIONS DENIED; APPEAL DISMISSED; APPELLANT BARRED. See 28 U.S.C. § 1915(g).