

CORRECTED

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-40508
Conference Calendar

THOMAS C. SAWYER, JR.,

Plaintiff-Appellant,

versus

SHERIFF J. P. LUBY,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. C-90-CV-176
- - - - -

June 16, 1999

Before EMILIO M. GARZA, BENAVIDES, and PARKER, Circuit Judges.

PER CURIAM:*

Thomas C. Sawyer, Jr., Texas prisoner #579557, seeks leave to proceed in forma pauperis (IFP), following the district court's certification that his appeal from the denial of his application for attorney's fees and costs was not taken in good faith.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Sawyer contends that, as the prevailing party in his 42 U.S.C. § 1983 action, he is entitled to attorney's fees. However, as a pro se, litigant, he is not entitled to attorney's fees for prosecuting this suit under § 1983. See Cofield v. City of Atlanta, 648 F.2d 986, 987-88 (5th Cir. 1981).

Because Sawyer fails to show that he will raise a nonfrivolous issue on appeal, his motion to proceed IFP is DENIED. See Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. 5TH CIR. R. 42.2. The dismissal of this appeal as frivolous counts as a strike for purposes of 28 U.S.C. § 1915(g). We caution Sawyer that once he accumulates three strikes, 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 DENIED; APPEAL DISMISSED; WARNING ISSUED.