

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-20397
Conference Calendar

THOMAS C. SAWYER, JR.,

Plaintiff-Appellant,

versus

ALLAN B. POLUNSKY; EDWARD MCELEA;
GARY L. JOHNSON, Director, Texas Department
of Criminal Justice, Institutional Division;
SYLVIA NANCE,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:97-CV-0562
- - - - -

August 24, 1999

Before KING, Chief Judge, and DAVIS and SMITH, Circuit Judges.

PER CURIAM:*

Plaintiff-Appellant 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 dismissal of his civil-rights complaint for failure to comply

* 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that this opinion should not be published and is not precedent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.

with court orders was taken in bad faith. Notwithstanding Sawyer's assertions to the contrary, the record indicates that he failed to comply with court orders out of contumaciousness and that the district court employed lesser sanctions before dismissing the action. See Long v. Simmons, 77 F.3d 878, 880 (5th Cir. 1996).

Sawyer's appeal is without arguable merit and is frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983).

Accordingly, Sawyer's IFP motion is DENIED and the appeal is DISMISSED. 5TH CIR. R. 42.2. The dismissal of this appeal as frivolous counts as a third strike for purposes of 28 U.S.C. § 1915(g). Therefore, Sawyer may no longer proceed IFP in any civil action or appeal filed while he is in prison unless he is under imminent danger of serious physical injury. See § 1915(g).

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