

**FILED**

August 21, 2007

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III  
Clerk

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No. 06-11008  
Conference Calendar

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LESTER JON RUSTON

Petitioner-Appellant

v.

ALBERTO R GONZALES, U S ATTORNEY GENERAL

Respondent-Appellee

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:06-CV-1350

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Before HIGGINBOTHAM, SMITH, and CLEMENT, Circuit Judges.

PER CURIAM:\*

Lester Jon Ruston, federal prisoner # 26834-177, moves this court for leave to proceed in forma pauperis (IFP) on appeal following the dismissal without prejudice of his 28 U.S.C. § 2241 petition. Ruston's motion is construed as a challenge to the district court's determination that the appeal is not taken in good faith. See *Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997). This court's inquiry into whether the appeal is taken in good faith "is limited to whether the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

appeal involves 'legal points arguable on their merits (and therefore not frivolous).'" *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (citation omitted). If the appeal is frivolous, this court may dismiss it sua sponte under 5TH CIR. R. 42.2. *Baugh*, 117 F.3d at 202 n.24.

Ruston has not shown that the district court erred in dismissing his § 2241 petition without prejudice. Ruston is not entitled to habeas relief based on conclusional allegations that it is not possible to raise his claims in the pending criminal case due to fraud and judicial and prosecutorial misconduct. See *Koch v. Puckett*, 907 F.2d 524, 530 (5th Cir. 1990). Ruston's request for IFP status is denied, and his appeal is dismissed as frivolous. See *Baugh*, 117 F.3d at 202 & n.24; 5TH CIR. R. 42.2. Ruston's motions for production, for contempt of court, for judicial notice, and to disqualify the judges of this court are also denied.

IFP DENIED; MOTIONS DENIED; APPEAL DISMISSED.