

June 21, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-31040
Conference Calendar

HENRY DAVIS, JR.,

Plaintiff-Appellant,

versus

GEORGE BELL; R. JOHNSON; C. MITCHELL; C. THOMPSON;
M. HAGER; J. PONDER; D. PENNINGTON,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:04-CV-38

Before WIENER, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

Henry Davis, Jr., Louisiana prisoner # 222934, has filed a motion to proceed in forma pauperis (IFP) on appeal from the summary-judgment dismissal of his action under 42 U.S.C. § 1983. The district court denied Davis's motion to appeal IFP and certified that the appeal was not taken in good faith.

By moving to proceed IFP, Davis is challenging the district court's certification. See *Baugh v. Taylor*, 117 F.3d 197, 202

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

(5th Cir. 1997). Because the merits of Davis's appeal are "inextricably intertwined" with the district court's certification that the appeal was not taken in good faith, we determine both issues, denying IFP and dismissing the appeal. See id.

Davis's complaint alleges de minimus injuries resulting from his refusal to comply with deputies' attempts to fit him with a court-ordered stun belt. See Siglar v. Hightower, 112 F.3d 191, 193 (5th Cir. 1997). Davis's appeal is without 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 DISMISSED. See 5TH CIR. R. 42.2.

Davis is cautioned that the dismissal of this appeal as frivolous counts as a strike under 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 385-87 (5th Cir. 1996). Davis is also cautioned that if he accumulates three strikes under 28 U.S.C. § 1915(g), 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 MOTION DENIED; APPEAL DISMISSED; SANCTION WARNING ISSUED.