

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-11269
Conference Calendar

DAVID GONZALES,

Plaintiff-Appellant,

versus

KEVIN MOORE, Riot Team Sergeant; NFN COMPTON, Disciplinary Captain; R. CHANDLER, Correctional Officer III; G. SARGENT, Correctional Officer III; D. ATNIP, Correctional Officer III; BEN BROWN, Regional Director; C.A. RAINS, Assistant Warden; P. DALTON, Riot Team Captain; R. DREWERY, Senior Warden; T. SULLIVAN, Riot Team Sergeant; R. CASTANEDA, Correctional Officer III; M. ROACH, Correctional Officer III; H. DAVILA, Correctional Officer III; J. COLLIVER, Correctional Officer III; NFN MCQUADE, Correctional Officer III; W. KNIGHT, Major of Internal Affairs Division; C. BENIVEDEZ, Correctional Officer III,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 1:00-CV-100

June 13, 2001

Before WIENER, DeMOSS, and DENNIS, Circuit Judge.

PER CURIAM:*

We construe the appeal of David Gonzales (TDCJ # 869900) as a motion for leave to proceed in forma pauperis (IFP) on appeal in order to challenge the district court's certification that the appeal is not taken in good faith. See Baugh v. Taylor, 117 F.3d

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

197, 202 (5th Cir. 1997). We note that Gonzales did not timely appeal the district court's order dismissing his complaint. His appeal was timely only with respect to the court's denial of the motion for reconsideration.

Gonzales has not shown that the district court's denial of his motion for reconsideration was so unwarranted as to constitute an abuse of discretion. See Seven Elves, Inc. v. Eskenazi, 635 F.2d 396, 402 (5th Cir. 1981). Accordingly, his appeal does not present a nonfrivolous issue, and the motion to proceed IFP is DENIED and the appeal is DISMISSED as frivolous. See Baugh v. Taylor, 117 F.3d 197, 202 & n.24 (5th Cir. 1997); 5TH CIR. R. 42.2. The dismissal of this appeal as frivolous counts as a "strike" for purposes of § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 385-87 (5th Cir. 1996).

IFP DENIED; APPEAL DISMISSED AS FRIVOLOUS; STRIKE WARNING ISSUED.