

August 11, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-31180
Summary Calendar

EARNEST L. SMITH,

Petitioner-Appellant,

versus

STATE OF LOUISIANA, Department of Public Safety and
Corrections, Board of Parole; VERDEGRA SCOTT; E. PEGGY
LANDRY; GETIHEN MCCAUSTLE; MARLON EVERY, Parole Officer,

Respondents-Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 02-MC-2141-B

Before JONES, BENAVIDES, and CLEMENT, Circuit Judges.

PER CURIAM:*

Earnest L. Smith, Louisiana prisoner # 1077412, appeals from the district court's denial of his motion to proceed *in forma pauperis* (IFP) on his 28 U.S.C. § 2241 petition. Smith presents no argument that the district court erred in denying his IFP motion and, consequently, has waived any challenge to the district court's IFP ruling. See Hughes v. Johnson, 191 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

607, 612-13 (5th Cir. 1999). Smith's failure to brief the denial of IFP status is the same as if he had not appealed the judgment. Brinkmann v. Dallas County Deputy Sheriff Abner, 813 F.2d 744, 748 (5th Cir. 1987). Accordingly, the appeal is without arguable merit and is hereby DISMISSED as frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983).

Smith's request for a certificate of appealability is DENIED as unnecessary. To the extent he seeks IFP status in this court, this court may authorize Smith to proceed IFP on appeal only if he is economically eligible and his appeal is not frivolous. Jackson v. Dallas Police Dep't, 811 F.2d 260, 261 (5th Cir. 1986). Because the appeal is frivolous, IFP is DENIED.

COA DENIED AS UNNECESSARY; IFP DENIED; APPEAL DISMISSED AS FRIVOLOUS.