

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 02-50432  
Summary Calendar

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CEDRIC CHARLES FIGGS,

Plaintiff-Appellant,

versus

EVELYN CLAY; MISSIALDIME,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. W-00-CV-153  
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March 17, 2003

Before HIGGINBOTHAM, SMITH, and CLEMENT, Circuit Judges.

PER CURIAM:\*

Cedric Charles Figgs, Texas prisoner # 623481, appeals the district court's denial of his FED. R. CIV. P. 60(b)(6) motion to reinstate his 42 U.S.C. § 1983 civil rights lawsuit, which the district court previously dismissed pursuant to Figgs' FED. R. CIV. P. 41(a)(2) voluntary-dismissal motion. The district court determined that the FED. R. CIV. P. 60(b)(6) motion was untimely and without merit. The district court denied Figgs' motion to

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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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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 in forma pauperis ("IFP") and certified that the appeal was not taken in good faith under 28 U.S.C. § 1915(a)(3) and FED. R. APP. P. 24(a). Figgs has filed a motion for leave to appeal IFP.

By moving for leave to appeal IFP, Figgs is challenging the district court's certification. Baugh v. Taylor, 117 F.3d 197, 202 (5th Cir. 1997). Figgs has not shown that the district court abused its discretion in denying the FED. R. CIV. P. 60(b)(6) motion as untimely because Figgs has not demonstrated "extraordinary circumstances" warranting relief. Pioneer Inv. Services Co. v. Brunswick Associates Ltd. Partnership, 507 U.S. 380, 393 (1993).

This appeal is without arguable merit and is frivolous. Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983). Figgs' IFP motion is DENIED and this appeal is DISMISSED. See 5TH CIR. R. 42.2; Baugh, 117 F.3d at 202 & n.24.

The dismissal of this appeal counts as one strike for purposes of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996). Figgs is WARNED that if he accumulates three strikes, he will not be allowed to proceed IFP in any civil action or appeal while he is incarcerated or detained in any facility unless he is in imminent danger of serious physical injury. See 28 U.S.C. § 1915(g).

MOTION DENIED; APPEAL DISMISSED; SANCTIONS WARNING ISSUED.