

August 22, 2003

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-10136  
Conference Calendar

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LEE NICHOLS MCNAB MILLER,

Plaintiff-Appellant,

versus

299 DEFENDANTS,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 7:02-CV-236-R  
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Before JONES, WIENER, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Lee Nichols McNab Miller, Texas prisoner # 688520, has filed an application for leave to proceed in forma pauperis (IFP) on appeal following the district court's dismissal of his 42 U.S.C. § 1983 complaint for want of prosecution. By moving for IFP, Miller is challenging the district court's certification that IFP should not be granted on appeal because his appeal presents no nonfrivolous issues. See Baugh v. Taylor, 117 F.3d 197, 202

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

(5th Cir. 1997). Miller's IFP "motion must be directed solely to the trial court's reasons for the certification decision." Id.

Miller does not address the district court's reasons for certification that his appeal was not taken in good faith (i.e., his failure to comply with the court's order to file an amended complaint). Because Miller does not provide any analysis of this issue, he waives any appeal of it. See United States v. Reyes, 300 F.3d 555, 558 n.2 (5th Cir. 2002); American States Ins. Co. v. Bailey, 133 F.3d 363, 372 (5th Cir. 1998).

Miller has not shown that the district court erred in certifying that an appeal would not be taken in good faith. Accordingly, we uphold the district court's order certifying that the appeal presents no nonfrivolous issues. Miller'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.

Miller 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). Before the instant notice of appeal was filed, Miller received two strikes in Miller v. Price, No. 9:01-CV-0290 (E.D. Tex. Oct. 21, 2002), and Miller v. Keller, No. 4:02-CV-1413 (S.D. Tex. April 23, 2002). After the notice of appeal was filed in this case, Miller received another strike in Miller v. Medical Staff, No. 02-10876 (5th Cir. Feb. 13, 2003); see also Miller v. Hawkins, No. 03-20144 (two strikes). Miller is cautioned that

he has now accumulated more than three strikes under 28 U.S.C. § 1915(g), and 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; 28 U.S.C. § 1915 BAR IMPOSED.