

February 23, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-30745
Conference Calendar

LARRY DONNELL NICHOLS,

Plaintiff-Appellant,

versus

BURL CAIN,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:04-CV-381-C

Before BARKSDALE, GARZA, and STEWART, Circuit Judges.

PER CURIAM:*

Larry Donnell Nichols, Louisiana prisoner # 161498, challenges the district court's dismissal of his petition for removal of his state court action and the denial of his application to proceed in forma pauperis (IFP) on appeal. He contests the district court's certification that his appeal is not taken in good faith. See *Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997); 28 U.S.C. § 1915(a)(3); FED. R. APP. P. 24(a).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Nichols has not shown that the district court erred in determining that the state action could not be removed to federal court by Nichols. Because the removal statutes provide that only a defendant may remove a state action to federal court, the district court did not err in determining that removal by Nichols was improper. See 28 U.S.C. §§ 1441(a), 1443(1), 1446(a); see also McKenzie v. United States, 678 F.2d 571, 574 (5th Cir. 1982).

Nichols has not demonstrated that he will raise a nonfrivolous issue on appeal. See Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983). Accordingly, Nichols's motion to proceed IFP is DENIED, and his appeal is DISMISSED as frivolous. 5TH CIR. R. 42.2; Baugh, 117 F.3d at 202 n.24.

The dismissal of this appeal as frivolous counts as a strike under the Prison Litigation Reform Act. See Adepegba v. Hammons, 103 F.3d 383, 387 (5th Cir. 1996). Accordingly, Nichols is cautioned that if he accumulates three strikes, he will not be permitted to 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. 28 U.S.C. § 1915(g).

IFP MOTION DENIED; APPEAL DISMISSED; SANCTION WARNING ISSUED.