

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 98-50452  
Summary Calendar

---

PATRICK EARL CONELY ET AL.,

Plaintiffs,

PATRICK EARL CONELY,

Plaintiff-Appellant,

versus

TEXAS BOARD OF CRIMINAL JUSTICE, ET AL.,

Defendants-Appellees.

- - - - -  
Appeal from the United States District Court  
for the Western District of Texas  
USDC No. W-98-CV-119  
- - - - -

April 15, 1999

Before JOLLY, SMITH, and WIENER, Circuit Judges.

PER CURIAM:\*

Plaintiff-Appellant Patrick Earl Conely, Texas prisoner # 521618, seeks leave to proceed in forma pauperis (IFP), following the district court's certification that his appeal from the denial of his motion for leave to file a civil-rights complaint was taken in bad faith. Conely argues that the district court abused its

---

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

discretion in denying his motion because he had not yet paid an outstanding sanction order.

Conely's appeal is without arguable merit and is frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Accordingly, Conely's IFP motion is DENIED and the appeal is DISMISSED. 5TH CIR. R. 42.2.

The dismissal of this appeal as frivolous counts as a strike for purposes of 28 U.S.C. § 1915(g). Conely has previously accumulated two strikes in the district court. Conely v. McElyea, No. W-96-CA-062 (W.D. Tex. Jan. 13, 1998); Conely v. Hickman, No. W-96-CA-066 (W.D. Tex. Jan. 16, 1998). He may no longer proceed IFP in any civil action or appeal filed while he is in prison unless he is under imminent danger of serious physical injury. See § 1915(g); Adepegba v. Hammons, 103 F.3d 383, 388 (5th Cir. 1996).

IFP DENIED; APPEAL DISMISSED; APPELLANT BARRED. See 28 U.S.C. § 1915(g).