

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-50057
Summary Calendar

ROBERT EARL O'DELL,

Plaintiff-Appellant,

versus

BRUCE W. SCHWARTZER;
KENNETH E. ARRINGTON;
ROGER PRYOR,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. W-99-CV-321

May 8, 2000

Before DAVIS, EMILIO M. GARZA and DENNIS, Circuit Judges.

PER CURIAM:*

Robert Earl O'Dell, Texas prisoner # 504872, has filed a motion for leave to proceed in forma pauperis (IFP) on appeal following the dismissal without prejudice of his 42 U.S.C. § 1983 complaint for failure to exhaust his available administrative remedies. By moving for IFP status, O'Dell is challenging the district court's certification that IFP status should not be granted on appeal because his appeal presents no nonfrivolous issues and is not taken in good faith. See Baugh v. Taylor, 117

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

F.3d 197, 202 (5th Cir. 1997).

O'Dell argues that he should be excused from the exhaustion requirement because he reasonably pursued all administrative remedies in good faith, but his "several attempts to file a grievance" were refused. He admits, however, that his Step 1 grievance was nevertheless heard.

By filing his § 1983 complaint only 20 days after the incident and foregoing all of his administrative remedies, O'Dell deprived the prison authorities of an opportunity to redress the matter administratively. O'Dell has not shown that he is excused from the exhaustion requirement. O'Dell has therefore failed to show that he will present a nonfrivolous issue on appeal.

Wendell v. Asher, 162 F.3d 887, 890-91 (5th Cir. 1998).

Accordingly, we uphold the district court's order certifying that the appeal presents no nonfrivolous issues. O'Dell'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.

The dismissal of this appeal as frivolous counts as a "strike" for purposes of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 385-87 (5th Cir. 1996). O'Dell is warned that if he accumulates three "strikes" pursuant to § 1915(g), 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 § 1915(g).

IFP MOTION DENIED; APPEAL DISMISSED; SANCTIONS WARNING ISSUED.