

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-11232
Conference Calendar

ROBERT LEE JOHNSON,

Plaintiff-Appellant,

versus

NFN ASAELI, Correctional
Officer; NFN TAYLOR,
Correctional Officer,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 7:01-CV-135-R

April 10, 2002

Before SMITH, DeMOSS, and PARKER, Circuit Judges.

PER CURIAM:*

Robert Lee Johnson, Texas prisoner # 666643, moves for leave to proceed in forma pauperis (IFP) following the district court's certification that his appeal was taken in bad faith. Johnson argues that the district court erred in failing to allow him to amend his complaint.

Johnson has failed to show that the district court erred in certifying that his appeal was taken in bad faith. Johnson had

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

an ample opportunity to amend his complaint to state an arguable claim, and he failed to do so in a timely manner.

Johnson's motion for leave to proceed IFP on appeal is DENIED. See 28 U.S.C. § 1915(a)(3); FED. R. APP. P. 24(a); Baugh v. Taylor, 117 F.3d 197, 202 (5th Cir. 1997). The instant appeal is without arguable merit and is thus frivolous. Accordingly, it is DISMISSED. See Baugh, 117 F.2d at 202 n.24; Howard v. King, 707 F.2d 215, 219-220 (5th Cir. 1983).

Both the district court's dismissal of Johnson's complaint and this court's dismissal of this appeal count as "strikes" for purposes of 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 385-87 (5th Cir. 1996). Johnson is CAUTIONED that if he accumulates a third "strike" under 28 U.S.C. § 1915(g), he will not be able 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. See 28 U.S.C. § 1915(g).

IFP MOTION DENIED; APPEAL DISMISSED; THREE-STRIKES WARNING ISSUED.