

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-20179
Summary Calendar

IRVING DEAN ELLIOT, also known as Al Yasa Muhammad,
Plaintiff-Appellant,

versus

MICHAEL GEERDS, Captain; McCLURE, Assistant Warden;
KITCHEN, Captain; Chaplain E. FARUQ,
Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-00-CV-1290

July 6, 2001

Before JOLLY, DAVIS and STEWART, Circuit Judges.

PER CURIAM:*

Irving Elliot, Texas prisoner # 384725, seeks leave to proceed in forma pauperis (IFP) following the district court's dismissal of his civil rights suit and the court's certification pursuant to 28 U.S.C. § 1915(a)(3) that his appeal is not being taken in good faith. By moving for IFP in this court, Elliot is challenging the district court's determination that the appeal is

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

not being taken in good faith. See Baugh v. Taylor, 117 F.3d 197, 202 (5th Cir. 1997).

Liberally construed, Elliot's argument is that the district court should have ordered the production of documents or conducted an evidentiary hearing to more fully examine Elliot's claims before dismissing the complaint. Elliot has not identified a nonfrivolous issue for appeal, and he has not shown that the denial of IFP status by the district court was error. See Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983).

Elliot's appeal lacks arguable merit and is DISMISSED AS FRIVOLOUS. See id. at 219-20. The dismissal of the appeal counts as a strike under 28 U.S.C. § 1915(g). The district court's dismissal of his 42 U.S.C. § 1983 suit also counts as strike under 28 U.S.C. § 1915(g). See Adepegba v. Hammons, 103 F.3d 383, 385-87 (5th Cir. 1996). Elliot is cautioned that if he accumulates three strikes, he may not proceed IFP in a 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).

Elliot's motions for an evidentiary hearing and for the production of documents are DENIED.