

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-30397
Conference Calendar

DELVIN CRAIN,

Plaintiff-Appellant,

versus

CHARLES C. FOTI, JR.,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 00-CV-3776-E
- - - - -

October 26, 2001

Before WIENER, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

Delvin Crain, Louisiana prisoner # 91405, appeals the district court's denial of his motion to proceed in forma pauperis (IFP) on appeal following the dismissal of his 28 U.S.C. § 1983 action as time-barred. By moving for IFP status, Crain is challenging the district court's certification that IFP status should not be granted on appeal because his appeal is frivolous and is not taken in good faith. See Baugh v. Taylor, 117 F.3d 197, 202 (5th Cir. 1997).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Crain has failed to present a nonfrivolous issue for appeal. Accordingly, the district court's order certifying that the appeal is frivolous is upheld. Crain's request for IFP status is DENIED, his motion entitled "writ of certiorari" 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), as does the district court's dismissal. See Adepegba v. Hammons, 103 F.3d 383, 385-87 (5th Cir. 1996). Crain is warned that if he accumulates one more "strike" pursuant to 28 U.S.C. § 1915(g), he may 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).

MOTIONS DENIED; APPEAL DISMISSED AS FRIVOLOUS; SANCTIONS WARNING ISSUED.