

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 02-30223  
Conference Calendar

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BURLIN J. HARRIS,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Middle District of Louisiana  
USDC No. 01-CV-173-B-M2  
- - - - -

August 21, 2002

Before HIGGINBOTHAM, DAVIS, and PARKER, Circuit Judges.

PER CURIAM:\*

Burlin J. Harris, a federal prisoner (# 20735-095), seeks leave to proceed in forma pauperis ("IFP") in his appeal from the district court's order dismissing his postconviction motion, purportedly filed pursuant to 28 U.S.C. § 2241, for lack of jurisdiction.

To obtain leave to proceed IFP on appeal, Harris must demonstrate both financial eligibility and that he will present a nonfrivolous issue on appeal. See Carson v. Polley, 689 F.2d

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

562, 586 (5th Cir. 1982). Harris has arguably demonstrated that he is financially eligible to proceed IFP, but he has failed to present a nonfrivolous issue for appeal. The district court lacked jurisdiction to consider Harris' postconviction motion under 28 U.S.C. § 2241, because Harris is incarcerated in Tennessee. See Lee v. Wetzel, 244 F.3d 370, 373-74 (5th Cir. 2001). Insofar as the motion should be construed as a 28 U.S.C. § 2255 motion to vacate, the motion is his third such motion, but Harris has not sought authorization from this court to file a successive 28 U.S.C. § 2255 motion. See 28 U.S.C. §§ 2255, 2244(b); United States v. Rich, 141 F.3d 550, 551 (5th Cir. 1998).

Because Harris has failed to show that he will raise a nonfrivolous issue on appeal, his motion to proceed IFP on appeal is DENIED. See Carson, 689 F.2d at 586. Because the appeal is frivolous, it is DISMISSED. See 5TH CIR. R. 42.2.

IFP DENIED; APPEAL DISMISSED.