

April 15, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-51383
Summary Calendar

ROBERT G. HART,

Plaintiff-Appellant,

versus

KENNETH HAIRSTON; KARL THOMAS, Major; JIMMY D. CRAIG,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. W-01-CV-151

Before JONES, BENAVIDES, and CLEMENT, Circuit Judges.

PER CURIAM:*

The district court has certified that the captioned appeal has not been taken in good faith, pursuant to 28 U.S.C. § 1915(a)(3) and FED. R. APP. P. 24(a), and that Texas prisoner Robert G. Hart (# 769108) should not be allowed to proceed in forma pauperis ("IFP") on appeal. Hart has filed a motion to proceed IFP on appeal, a pleading which this court construes as a motion challenging the district court's certification decision. 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

Hart avers that his case presents exceptional circumstances because he is indigent, has no legal training, and is hindered from investigating his case due to his incarceration in a maximum security prison. Hart has raised legal points that are arguable on their merits. Thus, Hart's motion for leave to proceed IFP is GRANTED. See Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983).

However, the denial of Hart's motion for appointment of counsel is AFFIRMED as he has not shown exceptional circumstances warranting the granting of such a motion. See Ulmer v. Chancellor, 691 F.2d 209, 212 (5th Cir. 1982).

IFP GRANTED; AFFIRMED.