

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

United States Court of Appeals  
Fifth Circuit

**FILED**

October 14, 2013

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No. 13-40237  
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Lyle W. Cayce  
Clerk

ELLOYD JOHNSON,

Plaintiff-Appellant

v.

RICK THALER,

Defendant-Appellee

\_\_\_\_\_  
Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 9:12-CV-201  
\_\_\_\_\_

Before DAVIS, SOUTHWICK, and HIGGINSON, Circuit Judges.

PER CURIAM:\*

Elloyd Johnson, Texas prisoner # 840854, seeks leave to proceed in forma pauperis (IFP) in his appeal of the district court’s dismissal of his 42 U.S.C. § 1983 action. The district court dismissed the complaint with prejudice pursuant to 28 U.S.C. § 1915A(b)(1) because it was untimely. By moving for leave to proceed IFP, Johnson is challenging the district court’s certification that his appeal is not taken in good faith. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997); 28 U.S.C. § 1915(a)(3); FED. R. APP. P. 24(a)(5).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 13-40237

Johnson's contention that the district court should have transferred his pleading to the Western District of Texas for inclusion in a closed case is frivolous. He has not shown that the district court erred by dismissing his complaint as barred by the statute of limitations. *See Moore v. McDonald*, 30 F.3d 616, 620 (5th Cir. 1994).

The district court's dismissal of the instant suit and this court's dismissal of the appeal as frivolous each count as a strike for purposes of § 1915(g). *See Adepegba v. Hammons*, 103 F.3d 383, 387-88 (5th Cir. 1996). Johnson has at least one other strike. *See Johnson v. Grounds*, No. 12-50213 (5th Cir. Nov. 26, 2012). As he now has accumulated three strikes under § 1915(g), Johnson is advised that he is no longer allowed to proceed IFP in any civil action or appeal filed while he is detained or incarcerated in any facility unless he is under imminent danger of serious physical injury. *See* § 1915(g).

IFP DENIED; APPEAL DISMISSED; § 1915(g) SANCTION BAR IMPOSED.