

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

No. 14-40136
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

March 2, 2015

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DAVID ALAN VOGEL, also known as David Allan Vogel,

Defendant-Appellant

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:13-CV-323

Before DAVIS, CLEMENT, and COSTA, Circuit Judges.

PER CURIAM:*

David Alan Vogel, federal prisoner # 09472-049, has filed a motion for leave to proceed in forma pauperis (IFP) on appeal. To obtain leave to proceed IFP on appeal, Vogel must demonstrate financial eligibility and a nonfrivolous issue for appeal. *See* FED. R. APP. P. 24(a); 28 U.S.C. § 1915(a)(1); *Carson v. Polley*, 689 F.2d 562, 586 (5th Cir. 1982).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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Vogel seeks to appeal the district court's denial of his motion for release pending disposition of his 28 U.S.C. § 2255 motion. Release should be granted to an offender pending collateral review "only when the petitioner has raised substantial constitutional claims upon which he has a high probability of success, and also when extraordinary or exceptional circumstances exist which make the grant of bail necessary to make the habeas remedy effective." *Calley v. Callaway*, 496 F.2d 701, 702 (5th Cir. 1974).

In his IFP motion and supporting brief, Vogel argues that the extraordinary circumstance of excessive delay exists and that his post-conviction remedy will not be effective unless he is released. Regardless of the merits of Vogel's § 2255 claims, upon which the district court has not yet ruled, Vogel has failed to show the existence of any "extraordinary or exceptional circumstances" necessitating his release to make the post-conviction remedy effective. *See Calley*, 496 F.2d at 702-03 & n.1. Although Vogel is correct that the district court did not apply the *Calley* standard, we conclude that the district court did not err in denying Vogel's motion for release based on the application of the proper standards. *See id.*

Vogel has not demonstrated that he will raise a nonfrivolous issue on appeal. His motion for leave to proceed IFP on appeal is DENIED. Vogel's appeal is DISMISSED as frivolous pursuant to 5TH CIR. R. 42.2. To the extent that Vogel's pleadings may be construed as a motion for release pending appeal directed to this court, no appeal is pending and such motion is DENIED.

IFP DENIED; RELEASE PENDING APPEAL DENIED; APPEAL DISMISSED AS FRIVOLOUS.