

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

No. 15-10522
Summary Calendar

United States Court of Appeals
Fif h Circuit

FILED
February 10, 2017

Lyle W. Cayce
Clerk

T. H. HILL,

Plaintiff–Appellant,

versus

DALLAS COUNTY DISTRICT ATTORNEY’S OFFICE; DALLAS COUNTY;
CITY OF DALLAS; BRENDA H. THOMPSON; CARL E. ROBERTS, L.L.C.;
CARL R. KING; DALLAS COUNTY CLERKS OFFICE,

Defendants–Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:15-CV-1311

Before JONES, SMITH, and DENNIS, Circuit Judges.

PER CURIAM:*

T. H. Hill moves for authorization to proceed *in forma pauperis* (“IFP”) to pursue the dismissal of his 42 U.S.C. § 1983 action. By doing so, he is

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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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). Because the notice of appeal was filed after the magistrate judge had issued his report and recommendation ("R&R") but before the district court had ruled, Hill sought to appeal the R&R.

A premature notice of appeal is valid only where the order appealed from announces a decision that would be appealable if it were immediately followed by the entry of judgment. *FirsTier Mortg. Co. v. Investors Mortgage Ins. Co.*, 498 U.S. 269, 276–77 (1991); *see also United States v. Cooper*, 135 F.3d 960, 963 (5th Cir. 1998). Even if it were immediately followed by the entry of judgment, the R&R was not appealable, *see Cooper*, 135 F.3d at 962–63, so the notice of appeal is insufficient to confer jurisdiction on this court, *see id.* Because Hill sought to appeal a non-appealable order, his appeal has no arguable basis in law or fact and therefore is frivolous. *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983).

Accordingly, the motion for leave to proceed IFP on appeal is DENIED, and the appeal is DISMISSED as frivolous. *See Baugh*, 117 F.3d at 202 n.24; 5TH CIR. R. 42.2.