

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

No. 15-50710

United States Court of Appeals
Fifth Circuit

FILED

June 14, 2016

Lyle W. Cayce
Clerk

ROBERT LEE MARTIN,

Plaintiff-Appellant

v.

HONORABLE DAVID CRAIN, Judge, 331st District Court, in his official
capacity,

Defendant-Appellee

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:15-CV-326

Before GRAVES, HIGGINSON, and COSTA, Circuit Judges.

PER CURIAM:*

Robert Lee Martin, Texas prisoner # 1050629, brought this 42 U.S.C. § 1983 action, alleging that Judge David Crain of the 331st District Court of Travis County refuses to act on motions Martin filed to challenge his Texas aggravated sexual assault conviction and life sentence. The sole relief that Martin sought in the district court was a writ of mandamus ordering Crain to rule on Martin's motions. Concluding that it has no authority to issue such a

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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writ, the district court dismissed the complaint as frivolous under 28 U.S.C. § 1915(e). Also, the district court concluded that Martin does not appeal in good faith and therefore denied him permission to proceed in forma pauperis (IFP) on appeal.

Martin seeks our permission to proceed IFP on appeal to question the district court's denial of IFP status and certification that his appeal is not 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)(3).

To proceed IFP, an appellant must first show that he is a pauper and that he appeals in good faith, which means, that the appeal presents a nonfrivolous issue. *Carson v. Polley*, 689 F.2d 562, 586 (5th Cir. 1982). An appeal is frivolous if it “lacks an arguable basis in law or fact.” *Taylor v. Johnson*, 257 F.3d 470, 472 (5th Cir. 2001). Martin does not show that his appeal presents a nonfrivolous issue. *See Moyer v. Clerk, DeKalb County Superior Court*, 474 F.2d 1275 (5th Cir. 1973) (“[A] federal court lacks the general power to issue writs of mandamus to direct state courts and their judicial officers in the performance of their duties where mandamus is the only relief sought.”). Accordingly, his IFP motion is DENIED, and his appeal is DISMISSED as frivolous. *See Baugh*, 117 F.3d at 202; 5TH CIR. R. 42.2. Additionally, because he now has at least two strikes against him, Martin is WARNED that three strikes will preclude him from proceeding IFP in any civil action or appeal while he is incarcerated or detained in any facility unless he “is under imminent danger of serious physical injury.” § 1915(g).