

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

No. 16-41610

United States Court of Appeals
Fifth Circuit

FILED

April 13, 2018

Lyle W. Cayce
Clerk

BRIAN WILLIAMS,

Plaintiff-Appellant

v.

BOWIE COUNTY, TEXAS; SAMANTHA OGLESBY, District Attorney; RICK SHUMAKER, Chief Public Defender,

Defendants-Appellees

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 5:16-CV-83

Before ELROD, GRAVES and HO, Circuit Judges.

PER CURIAM:*

Brian Williams filed a civil rights complaint seeking redress for the alleged wrongful actions of the prosecutor, his court-appointed attorney, and Bowie County, Texas, in connection with state criminal proceedings that led to his conviction of three counts of robbery. The district court dismissed Williams's suit under 28 U.S.C. § 1915(A) as frivolous and for failure to state a claim upon which relief could be granted. It denied Williams's request to

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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proceed in forma pauperis (IFP) on appeal. This court is now presented with Williams's IFP motion.

By moving for IFP status in this court, Williams challenges the district court's denial of his request for leave to proceed IFP on appeal, which was grounded in its determination that his appeal was not taken in good faith. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997). This court's inquiry into whether an appeal is taken in good faith "is limited to whether the appeal involves legal points arguable on their merits (and therefore not frivolous)." *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (internal quotation marks and citation omitted).

The district court dismissed Williams's claims against Oglesby under 42 U.S.C. §§ 1983, 1985, and 1986 as barred under the doctrine of absolute prosecutorial immunity and against Shumaker as conclusory and because Shumaker, as a court appointed public defender, was not a state actor. The district court judge noted, in addition, that Williams's claims against Oglesby and Shumaker were barred under *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994), to the extent they implicated the validity of his state convictions. It dismissed Williams's § 1983 claim against Bowie County because it could not be held liable for the actions of the state trial court judge. Finally, the district court dismissed Williams's claims against Bowie County for violating the Americans with Disabilities Act (ADA) because he failed to adequately allege a disability or that he had been excluded from participation in, or denied benefits of, services, programs, or activities on account of his disability.

On appeal, Williams asserts generally that the district court erred when it dismissed his complaint and, in particular, that Bowie County violated the ADA. However, he has not refuted any of the conclusions upon which the district court relied in dismissing his complaint. Williams has not shown that

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he will raise a nonfrivolous issue on appeal. *See Howard*, 707 F.2d at 220. Accordingly, his IFP motion is DENIED. Because this appeal is frivolous, it is DISMISSED. *See Baugh*, 117 F.3d at 202 n.24; *Howard*, 707 F.2d at 219-20; 5TH CIR. R. 42.2. Williams's motion for the appointment of counsel also is DENIED.

Both the district court's dismissal of Williams's § 1983 complaint and the dismissal of this appeal as frivolous count as strikes under the three-strikes provision, 28 U.S.C. § 1915(g). *See Adepegba v. Hammons*, 103 F.3d 383, 387-88 (5th Cir. 1996). Williams is cautioned that if he accumulates another strike under § 1915(g), he will not be permitted to proceed in forma pauperis in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. *See* § 1915(g).

MOTIONS DENIED; SANCTION WARNING ISSUED.