

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

No. 17-10456

United States Court of Appeals
Fifth Circuit

FILED

March 2, 2018

Lyle W. Cayce
Clerk

ANTHONY DEWAYNE BOOKER,

Plaintiff-Appellant

v.

STEPHEN RANCOURT, Wichita County Assistant District Attorney,

Defendant-Appellee

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 7:17-CV-40

Before SMITH, WIENER, and HAYNES, Circuit Judges.

PER CURIAM:*

Anthony Dewayne Booker moves this court for authorization to proceed in forma pauperis (IFP) following the district court's certification that any appeal would not be taken in good faith pursuant to 28 U.S.C. § 1915(e)(2)(B). By seeking leave to proceed IFP in this court, Booker is challenging the district court's certification. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997).

Booker's notice of appeal was filed after the magistrate judge issued his report and recommendation but before the district court had issued its final

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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ruling. A premature notice of appeal is valid only when the order appealed from announces a decision that would be appealable if it were immediately followed by the entry of judgment. *FirsTier Mortgage 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). The magistrate judge could not immediately enter a final judgment of the district court, and that judge's report and recommendation was not appealable. *See Cooper*, 135 F.3d at 962-63. As such, Booker's notice of appeal was insufficient to confer jurisdiction on this court. *See id.*

Accordingly, Booker's request for leave to proceed IFP on appeal is denied, and the appeal is dismissed for lack of jurisdiction. Booker's motion to appoint counsel is denied.

APPEAL DISMISSED; MOTIONS DENIED.