

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

No. 17-60703

United States Court of Appeals
Fifth Circuit

FILED

September 11, 2018

Lyle W. Cayce
Clerk

JAMES FERGUSON,

Plaintiff-Appellant

v.

TONYA MORGAN; JACKIE WILLIAMS; LEMARCUS RUFFIN; R.
PENNINGTON; WARDEN FRANK SHAW,

Defendants-Appellees

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 3:16-CV-237

Before JONES, ELROD, and ENGELHARDT, Circuit Judges.

PER CURIAM:*

James Ferguson, Mississippi prisoner # 60446, moves this court for a transcript at government expense in this appeal of the dismissal of his 42 U.S.C. § 1983 complaint. He also seeks the appointment of counsel and for leave to present newly discovered evidence.

To obtain a transcript at government expense, Ferguson must satisfy the criteria of 28 U.S.C. § 753(f). *See Harvey v. Andrist*, 754 F.2d 569, 571 (5th Cir.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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1985). Section 753(f) provides, in part, that the United States shall pay the fees for transcripts furnished in civil proceedings to persons permitted to appeal in forma pauperis (IFP) if the trial judge or a circuit judge certifies that the appeal is not frivolous (i.e., it presents a substantial question). § 753(f). The moving party must also establish that the transcript is necessary for proper disposition of the appeal. *Richardson v. Henry*, 902 F.2d 414, 415 (5th Cir. 1990); *Harvey*, 754 F.2d at 571. Ferguson cannot satisfy the requisite criteria because he fails to set forth a cognizable § 1983 claim. *See Jones v. Greninger*, 188 F.3d 322, 326 (5th Cir. 1999); *Neals v. Norwood*, 59 F.3d 530, 533 (5th Cir. 1995).

Ferguson's appeal is without arguable merit and is frivolous. *See Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983). Accordingly, the appeal is dismissed. *See* 5TH CIR. R. 42.2.

The dismissal of this appeal as frivolous counts as a strike for purposes of 28 U.S.C. § 1915(g). *See Adepegba v. Hammons*, 103 F.3d 383, 387-88 (5th Cir. 1996). Ferguson is cautioned that once he accumulates three strikes, he may not proceed IFP 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). In light of the dismissal of his appeal, Ferguson's motion for appointment of counsel is denied. His motion to present newly discovered evidence is also denied.

APPEAL DISMISSED AS FRIVOLOUS; MOTIONS DENIED;
SANCTION WARNING ISSUED.