

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

No. 18-50178

United States Court of Appeals
Fifth Circuit

FILED

January 15, 2019

Lyle W. Cayce
Clerk

ARTHUR R. HOLLOWAY, JR.,

Plaintiff-Appellant

v.

RONALD GIVENS, Warden, John B. Connally Unit, in his Official Capacity; FRANK STENGEL, Assistant Warden, John B. Connally Unit, in his Official Capacity; BRIAN WILLIAMS, Assistant Warden, John B. Connally Unit, in his Official Capacity; JESUS M. PERALTA, Former Warden, John B. Connally Unit, in his Official Capacity; JUAN M. GARCIA, Former Assistant Warden, John B. Connally Unit, in his Official Capacity; MARIA D. RAMIREZ, Former Assistant Warden, John B. Connally Unit, in her Official Capacity; JOE CASTILLO, Major, John B. Connally Unit, in his Individual Capacity; DONNIE TODD, Captain, John B. Connally Unit, in his Individual Capacity; JEREMY WILSON, Lieutenant, John B. Connally Unit, in his Individual Capacity; MARQUETTA N. DURAN, Lieutenant, John B. Connally Unit, in her Individual Capacity; ANTHONY M. AMBRISTA, Lieutenant, John B. Connally Unit, in his Individual Capacity; RHONDA HACKETT, Lieutenant, John B. Connally Unit, in her Individual Capacity; MIGUEL S. SANCHEZ, Sergeant, John B. Connally Unit, in his Individual Capacity; CODY BELDIN, Correctional Officer, John B. Connally Unit, in his Individual Capacity; RUDY GARCIA, Correctional Officer, John B. Connally Unit, in his Official Capacity; JAMISON DAWSON, Correctional Officer, John B. Connally Unit, in his Individual Capacity; ALFONSO RAMOS, JR., Correctional Officer, John B. Connally Unit, in his Individual Capacity; AUREY KUNSCHIK, Correctional Officer, John B. Connally Unit, in his Individual Capacity; RAMON C. QUINTENANILLA, Correctional Officer, John B. Connally Unit, in his Individual Capacity; STACY G. STEELE, Counsel Substitute, John B.

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Connally Unit, in her Individual Capacity; VICTORIA E. RODRIGUEZ, Administrative Assistant, John B. Connally Unit, in her Individual Capacity; RENE MARTINEZ, Safety Officer, John B. Connally Unit, in her Individual Capacity,

Defendants-Appellees

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:17-CV-1173

Before DENNIS, GRAVES, and COSTA, Circuit Judges.

PER CURIAM:*

Arthur R. Holloway, Jr., Texas prisoner # 02037836, has appealed from the district court's dismissal of his 42 U.S.C. § 1983 complaint, which asserted claims of deliberate indifference, retaliation, and deprivation of due process and named as defendants 22 past and present employees of the institution where he was confined. The district court dismissed Holloway's claims because they were frivolous and failed to state a claim for relief. For those reasons, the district court also denied Holloway's motion for leave to proceed in forma pauperis (IFP) on appeal and certified that any appeal would not be taken in good faith. *See* 28 U.S.C. § 1915(a)(3); FED. R. APP. P. 24(a)(3). Holloway now moves this court for leave to proceed IFP on appeal and for the appointment of counsel.

By moving to appeal IFP, Holloway challenges the certification that his appeal is not in good faith. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997). His IFP request "must be directed solely to the trial court's reasons for

* 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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the certification decision,” *id.*, and this court’s inquiry “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). This court may dismiss the appeal if “it is apparent that an appeal would be meritless.” *Baugh*, 117 F.3d at 202 n.24; *see* 5TH CIR. R. 42.2.

In its dismissal order, the district court determined that Holloway’s claims failed because he had not alleged causation, injury, and personal involvement with the requisite specificity. Holloway’s conclusional assertions of error by the district court and reiteration of the violations of his constitutional rights alleged in his complaint do not raise “legal points arguable on their merits.” *Howard*, 707 F.2d at 220; *see also Mowbray v. Cameron County, Tex.*, 274 F.3d 269, 278 (5th Cir. 2001).

Accordingly, Holloway’s IFP motion is DENIED and his appeal is DISMISSED as frivolous. *See Baugh*, 117 F.3d at 202 & n.24 (5th Cir. 1997); 5TH CIR. R. 42.2. His motion for appointment of counsel is also DENIED.

The dismissal by the district court and the dismissal of this appeal as frivolous give Holloway a total of two “strikes” under 28 U.S.C. § 1915(g). Holloway is WARNED that if he accumulates three strikes he may not thereafter 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).