

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

\_\_\_\_\_  
No. 19-30076  
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United States Court of Appeals  
Fifth Circuit

**FILED**

September 27, 2019

Lyle W. Cayce  
Clerk

DWIGHT BACON,

Plaintiff-Appellant

v.

BENJAMIN ZERINGUE, Major in his Individual and Official Capacity,

Defendant-Appellee

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Appeal from the United States District Court  
for the Middle District of Louisiana  
USDC No. 3:16-CV-220  
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Before SMITH, COSTA, and HO, Circuit Judges.

PER CURIAM:\*

Dwight Bacon, Louisiana prisoner # 556894, moves for leave to proceed in forma pauperis (IFP) in this appeal of the jury's verdict in favor of the defendant in this 42 U.S.C. § 1983 case. The motion is a challenge to the district court's certification that the appeal is not taken in good faith. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997). This court's inquiry into a litigant's good faith "is limited to whether the appeal involves legal points

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\* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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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).

Bacon fails to meet this standard. Insofar as his claims rely upon a trial video, these arguments do not show an arguable claim because no such video exists. *See id.* His vague and conclusional assertions concerning the alleged withholding of unspecified evidence and the coaching of witnesses likewise fail to show arguable claims. *See id.* Accordingly, the motion for leave to proceed IFP is DENIED, his motion for the trial video is likewise DENIED, and the appeal is DISMISSED AS FRIVOLOUS. *See Baugh*, 117 F.3d at 202 n.24; 5TH CIR. R. 42.2.

The dismissal of this appeal as frivolous constitutes a strike under 28 U.S.C. § 1915(g). *See Adepegba v. Hammons*, 103 F.3d 383, 387-88 (5th Cir. 1996), *abrogated in part on other grounds by Coleman v. Tollefson*, 135 S. Ct. 1759, 1762-63 (2015). Bacon is WARNED that accumulating 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. *See* § 1915(g).