

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

August 17, 2020

Lyle W. Cayce
Clerk

No. 20-30003

SEAN WESLEY,

Plaintiff—Appellant,

versus

JAMES LEBLANC, SECRETARY, LOUISIANA DEPARTMENT OF
CORRECTIONS; JOHN DOE, WARDEN 1-7; JOHN DOE, SHERIFF 1-
2,

Defendants—Appellees.

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:18-CV-976

Before STEWART, GRAVES, and HIGGINSON, *Circuit Judges.*

PER CURIAM:*

Sean Wesley, Louisiana prisoner # 372598, moves this court for leave to proceed in forma pauperis (IFP) on appeal following the dismissal of his 42 U.S.C. § 1983 complaint as malicious and frivolous under 28 U.S.C.

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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§ 1915(e)(2)(B) and § 1915A(b). Wesley's motion is construed as a challenge to the district court's determination 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 "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) (citations omitted). Our review is de novo. *See Green v. Atkinson*, 623 F.3d 278, 280 (5th Cir. 2010); *Geiger v. Jowers*, 404 F.3d 371, 373 (5th Cir. 2005).

The district court dismissed Wesley's complaint on the ground that his claims arose out of the same series of events that were the subject of prior § 1983 lawsuits that Wesley had filed IFP. In his prior lawsuits, as in the current suit, Wesley had complained that he received inadequate treatment for his hepatitis C and that the various named defendants in those suits were deliberately indifferent to his medical needs. On appeal, Wesley contends that the district court erred by dismissing the case against him because the named defendant, James LeBlanc, was not named in his prior lawsuits and he is the only party who can now adequately afford Wesley the relief he seeks.

An action may be dismissed as malicious and frivolous if it duplicates claims raised by the same plaintiff in a previous or pending litigation. *Pittman v. Moore*, 980 F.2d 994, 994-95 (5th Cir. 1993); *Wilson v. Lynaugh*, 878 F.2d 846, 850 (5th Cir. 1989). Wesley has not shown that the district court erred in dismissing his complaint as duplicative and malicious. *See Pittman*, 980 F.2d at 994-95.

Wesley's motion for leave to proceed IFP is denied, and the appeal is dismissed as frivolous. *See Baugh*, 117 F.3d at 202 n.24. Wesley has accumulated three strikes for purposes of 28 U.S.C. §1915(g). Accordingly, he may no longer proceed IFP in any civil action or appeal filed while he is

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incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. *See* § 1915(g).

APPEAL DISMISSED; MOTION DENIED; 28 U.S.C. § 1915(g) BAR IMPOSED.