

United States Court of Appeals
for the Fifth Circuit

No. 23-10889
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

April 25, 2024

Lyle W. Cayce
Clerk

DANIEL NEAL,

Plaintiff—Appellant,

versus

APRIL DEMARONEY, *Captain of Correctional Officer*;
TERRY RAINES, *Disciplinary Hearing Officer*;
JASON HARDEGREE, *Assistant Warden*;
B. BARNETT, *Program Supervisor of Offender Grievance*,

Defendants—Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:20-CV-108

Before SMITH, HIGGINSON, and ENGELHARDT, *Circuit Judges*.

PER CURIAM:*

Daniel Neal, Texas prisoner #1624027, appeals the dismissal of his *pro se* 42 U.S.C. § 1983 complaint. He also has filed various motions seeking the appointment of counsel.

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

No. 23-10889

When Neal filed his notice of appeal and moved to proceed *in forma pauperis* (“IFP”), he had, on at least three occasions while incarcerated, brought an action or appeal in a court of the United States that was dismissed as frivolous, malicious, or for failure to state a claim upon which relief could be granted. *See Neal v. Andrews*, No. 2:17-CV-149, 2020 WL 587819, 2-3 (N.D. Tex. Feb. 6, 2020) (unpublished); *Neal v. Vogelgesang*, No. 2:18-CV-26, 2020 WL 6585870, 2-3 (N.D. Tex. Nov. 10, 2020) (unpublished); *Neal v. Foley*, No. 2:17-CV-232, 2021 WL 107208, 2 (N.D. Tex. Jan. 12, 2021) (unpublished). He is therefore barred from proceeding 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* 28 U.S.C. § 1915(g).

There is no allegation, nor does the record reflect, that Neal was under imminent danger of serious physical injury when he filed his notice of appeal or IFP motion. *See id.* Thus, the district court improvidently granted him leave to proceed IFP on appeal.

Accordingly, Neal’s IFP status is DECERTIFIED, and the appeal is DISMISSED. Neal has 30 days from the date of this opinion to pay the full appellate filing fee to the clerk of the district court, should he wish to reinstate his appeal. His motions for the appointment of counsel are DENIED without prejudice to refiling, if he reinstates this appeal.