

United States Court of Appeals for the Fifth Circuit

No. 23-50852
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

March 11, 2024

Lyle W. Cayce
Clerk

ANTONIO J. NEGRON,

Petitioner—Appellant,

versus

BOBBY LUMPKIN, *Director, Texas Department of Criminal Justice,*
Correctional Institutions Division; STATE OF TEXAS,

Respondents—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:23-CV-1238

Before ELROD, HAYNES, and DOUGLAS, *Circuit Judges.*

PER CURIAM:*

Antonio J. Negron, Texas prisoner # 02256555, seeks leave to proceed in forma pauperis on appeal from the district court's: (1) order finding that his "Motion for Correction of Sentence" was an unauthorized successive 28 U.S.C. § 2254 application and transferring it to this court; and (2) order denying his motion for reconsideration under Federal Rule of Civil

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

No. 23-50852

Procedure 59(e). In his motion for correction of sentence, Negron appeared to argue that he was incapable of committing one or both of the offenses leading to his convictions during the applicable time period alleged in his indictment. He sought correction of his sentence under, *inter alia*, former Federal Rule of Criminal Procedure 35(a).

By moving to proceed IFP on appeal, Negron is challenging the district court's certification that his appeal is not taken in good faith. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997). An appeal is taken in good faith if it raises legal points that are arguable on the merits and thus nonfrivolous. *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Negron's argument that the district court erred by failing to provide him notice of its intent to recharacterize his motion as a successive § 2254 application and an opportunity to withdraw the motion is misplaced, as it is undisputed that Negron previously filed a § 2254 application. *See Castro v. United States*, 540 U.S. 375, 377 (2003). Negron otherwise fails to address the district court's findings. By failing to do so, he has not identified a nonfrivolous argument that the district court erred in finding that his motion was an unauthorized successive § 2254 application and transferring it to this court. *See Howard*, 707 F.2d at 220.

Accordingly, we DENY the motion to proceed IFP on appeal and DISMISS Negron's appeal as frivolous. *See Baugh*, 117 F.3d at 202 & n.24; 5th Cir R. 42.2. Negron's motion for appointment of counsel is likewise DENIED.