

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8319
Conference Calendar

MICHAEL KENNEDY,

Plaintiff-Appellant,

versus

JAMES A. COLLINS,
Director of TDC, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. W-91-CV-87

(November 1, 1993)

Before POLITZ, Chief Judge, and SMITH and WIENER, Circuit Judges.

BY THE COURT:

This case is here on a motion to proceed in forma pauperis (IFP) on appeal. Michael Kennedy attempted to file this civil rights action under 42 U.S.C. § 1983. His complaint was never docketed. The district court dismissed the action because Kennedy had not paid the sanctions imposed in cases no. W-91-CV-244 and no. W-92-CA-173.

This Court may authorize Kennedy to proceed in forma pauperis on appeal if he is unable to pay the costs of the appeal and the appeal is taken in good faith, i.e., the appeal presents nonfrivolous issues. 28 U.S.C. § 1915(a); see Holmes v. Hardy, 852 F.2d 151, 153 (5th Cir.), cert. denied, 488 U.S. 931 (1988).

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Kennedy argues that the district court improperly dismissed his suit because he filed this lawsuit before the district court imposed sanctions in the other lawsuits. Kennedy is correct. Kennedy attempted to file this complaint on April 1, 1991. The judgment imposing sanctions in case no. W-91-CA-244 was signed on August 27, 1992. See copy attached. Case no. W-92-CA-173 was not even filed until sometime in 1992. This issue is not frivolous. Kennedy is a pauper.

Therefore, IT IS ORDERED that Kennedy's motion to proceed IFP on appeal is GRANTED, the judgment of the district court is VACATED, and Kennedy's case is REMANDED for proceedings consistent with this order. Kennedy is warned that he will be subject to further sanctions if he proceeds with this complaint and it is determined to be frivolous. Kennedy should consider a voluntary dismissal of his complaint.