

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-50467  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BOBBY EUGENE STEWART,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. W-89-CR-106 (2)  
- - - - -  
(September 21, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

IT IS ORDERED that Bobby Eugene Stewart's motion for leave to appeal in forma pauperis (IFP) is DENIED. The appeal lacks arguable merit and is, therefore, frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. See 5th Cir. R. 42.2.

Stewart has not filed a 28 U.S.C. § 2255 motion in the district court. He moves for leave to proceed IFP on appeal in order to challenge the district court's denial of his motion

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\* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

requesting records, documents, and transcripts for use in preparing his § 2255 motion. Stewart has no right to copies of these records to go on a fishing expedition for possible defects. See Bennett v. United States, 437 F.2d 1210, 1211 (5th Cir. 1971).

IT IS FURTHER ORDERED that Stewart's motion for appointment of counsel on appeal is DENIED.

APPEAL DISMISSED.