

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-10173
Summary Calendar

GARY FRANCIS COURTNEY,

Plaintiff-Appellant,

versus

J. HAVARD, Parole Officer, ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 1:95-MC-4-C
- - - - -

(April 21, 1995)

Before JONES, BARKSDALE and BENAVIDES, Circuit Judges.

PER CURIAM:*

Gary Francis Courtney seeks to appeal in forma pauperis (IFP) in his appeal from the district court's denial of his application to obtain pauper status to proceed with his civil rights action. Liberally construed, Courtney argues that the district court based its decision on erroneous information concerning his economic status.

The denial of IFP status is reviewed for an abuse of discretion. See Flowers v. Turbine Support Division, 507 F.2d

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

1242, 1243-44 (5th Cir. 1975). Whether a party may proceed IFP in the district court is based solely upon economic criteria. Watson v. Ault, 525 F.2d 886, 891 (5th Cir. 1976). Poverty sufficient to qualify does not require absolute destitution. Adkins v. E.I. Du Pont de Nemours & Co., 335 U.S. 331, 339 (1948).

Courtney presented credible evidence that the inmate trust fund officer erroneously reported that the total deposits made to his account in the 90-day period preceding his application was \$472.74. The evidence showed that Courtney had total deposits of \$55 in September, October, and November of 1994 and a balance in his account of \$28.46. The determination that Courtney did not meet the economic criteria because he had deposits of \$472.74 was an abuse of discretion.

Accordingly, Courtney has presented a nonfrivolous issue for appeal. See Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983). IT IS ORDERED that his motion to proceed in forma pauperis on appeal is GRANTED. IT IS FURTHER ORDERED that the judgment of the district court is VACATED and the case is REMANDED for further proceedings. See Clark v. Williams, 693 F.2d 381, 381-82 (5th Cir. 1982). Among the alternatives available to the district court is the imposition of a partial payment of the filing fee. See Green v. Estelle, 649 F.2d 298, 301-02 (5th Cir. 1981).