

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-40716
Conference Calendar

JEFFREY D. NOIEL,

Plaintiff-Appellant,

versus

HARRY W. MCKEE,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:96-CV-299
- - - - -

April 17, 1997

Before REAVLEY, DAVIS, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Jeffrey D. Noiel, Texas prisoner # 495518, appeals the dismissal of his civil rights complaint as frivolous. He has filed a motion for leave to proceed in forma pauperis (IFP) on appeal. The motion for leave to appeal IFP is GRANTED.

Noiel is not required to pay an initial partial filing fee; however, he shall make monthly payments of twenty percent of the preceding month's income credited to his account. See 28 U.S.C.

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

§ 1915(a). The agency having custody of Noiel is directed to forward payments from his prisoner account to the clerk of the district court each time the amount in his account exceeds \$10 until the filing fee is paid. See id.

Noiel filed his complaint against Magistrate Judge Harry W. McKee. Judicial officers such as Magistrate Judge McKee are entitled to absolute immunity from damage claims under 42 U.S.C. § 1983 arising out of acts performed in the exercise of their judicial functions. Graves v. Hampton, 1 F.3d 315, 317 (5th Cir. 1993).

Noiel's appeal is without arguable merit and thus frivolous. See 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. Noiel now "has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted." 28 U.S.C. § 1915(g). Accordingly, Noiel is barred from proceeding IFP in a civil action unless he is under imminent danger of serious physical injury. Id.

APPEAL DISMISSED. SANCTION IMPOSED.