

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-60501
Summary Calendar

THOMAS MALLORY,

Plaintiff-Appellant,

versus

LINDA STONE, Supreme Court Clerk,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 3:95-CV-780-BN
- - - - -

September 22, 1998

Before DAVIS, BENAVIDES, and PARKER, Circuit Judges.

PER CURIAM:*

Thomas Mallory, Mississippi state prisoner # EF354378, seeks leave to proceed in forma pauperis (IFP) in the appeal of the dismissal of his civil rights complaint as frivolous. By moving for IFP, Mallory is challenging the district court's certification that IFP status should not be granted on appeal because his appeal is not taken in good faith. See Baugh v. Taylor, 117 F.3d 197, 202 (5th Cir. 1997). Because Mallory has not demonstrated that he will raise a nonfrivolous issue on

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

appeal, his motion to proceed IFP is DENIED. See Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983). Mallory's motions for the appointment of counsel and for time to engage in discovery also are denied. Because the appeal is frivolous, it is DISMISSED. 5TH CIR. R. 42.2.

A prisoner may not

bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner 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, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). In addition to the district court's dismissal of the instant civil rights complaint as frivolous and to this court's dismissal of this appeal as frivolous, Mallory has had at least five additional civil rights complaints dismissed as frivolous. See Mallory v. Herring, No. 97-CV-59 (N.D. Miss. Oct. 10, 1997); Mallory v. Riley, No. 95-CV-170 (N.D. Miss. Dec. 11, 1997); Mallory v. Riley, No. 95-CV-171 (N.D. Miss. Nov. 4, 1997); Mallory v. Riley, No. 95-CV-163 (N.D. Miss. Nov. 4, 1997). Because Mallory has more than three "strikes," except for cases involving an imminent danger of serious physical injury, Mallory is barred from proceeding further under § 1915. See Adepegba v. Hammons, 103 F.3d 383, 387-88 (5th Cir. 1996). He may proceed in subsequent civil cases under the fee provisions of § 1911-14.

IFP DENIED; MOTIONS FOR APPOINTMENT OF COUNSEL AND FOR
ADDITIONAL TIME TO ENGAGE IN DISCOVERY DENIED; APPEAL DISMISSED;
§ 1915(g) SANCTION IMPOSED.