

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-40466
Conference Calendar

JOHN W. BANOS,

Plaintiff-Appellant,

versus

L. GAIL, employee in
the Tyler Division of
U.S. District Court,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 5:97-CV-7
- - - - -

August 15, 1997

Before KING, HIGGINBOTHAM, AND DUHÉ, CIRCUIT JUDGES.

PER CURIAM:*

The magistrate judge improperly granted John Wesley Banos, Texas prisoner # 545431, leave to proceed on appeal in forma pauperis (IFP). Banos has at least three strikes, pursuant to 28 U.S.C. § 1915(g), which bars Banos from IFP status. See Banos v. Garner, No. 96-CV-92 (E.D. Tex. May 22, 1996) (case dismissed as frivolous; appeal dismissed for want of prosecution); Banos v. Bush, No. 96-CV-219 (E.D. Tex. Oct. 3, 1996)(case dismissed as

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

frivolous; appeal dismissed for want of prosecution); Banos v. Shaw, No. 93-CV-45 (E.D. Tex. Apr. 23, 1993)(case dismissed as frivolous; district court's judgment was affirmed on appeal).

Nothing in the record indicates that the exception to the statutory bar applies in this case. IT IS ORDERED that the earlier order granting leave to proceed IFP is VACATED. Banos has thirty days in which to pay the \$105 filing fee. Failure to make a timely payment will result in the dismissal of the appeal for want of prosecution. See 5th Cir. R. 42.3.1.2.

APPEAL DISMISSED IF FULL FILING FEE NOT PAID.