

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 02-50101  
Conference Calendar

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JOHN EARL SIMMONS,

Plaintiff-Appellant,

versus

DAVID MOYA; ET AL.,

Defendants,

HAROLD A. REICHEL; TIMOTHY W. ROPPLE,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. W-99-CV-117  
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October 30, 2002

Before DeMOSS, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:\*

John Earl Simmons, Texas prisoner # 528686, has filed a motion to proceed in forma pauperis (IFP) on appeal following the district court's dismissal of his claims as frivolous and for failure to state a claim and the district court's denial of IFP upon certifying that Simmons' appeal was not being taken in good

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

faith. Simmons states that he is financially unable to pay the filing fees. However, he does not challenge the district court's reasons for denying him IFP status for his appeal; nor does he demonstrate that his appeal would not be frivolous. He has not made the requisite showing for IFP status for his appeal. Baugh v. Taylor, 117 F.3d 197, 202 (5th Cir. 1997); Jackson v. Dallas Police Dep't, 811 F.2d 260, 261 (5th Cir. 1986).

His motion to proceed IFP on appeal is DENIED. His appeal is DISMISSED AS FRIVOLOUS. See Baugh, 117 F.3d at 202 n.24; FED. R. APP. P. 42.2. Simmons is advised that the district court's dismissal of his case and this court's dismissal of his appeal constitute two strikes. See 28 U.S.C. § 1915(g). If he accumulates three strikes under 28 U.S.C. § 1915(g), he may not proceed IFP in any civil action or appeal while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury.