

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

October 21, 2010

Lyle W. Cayce
Clerk

No. 10-10095

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MICHAEL ANTHONY DAVIS,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
No. 4:05-CR-111-2

Before DAVIS, SMITH, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Michael Davis, federal prisoner # 33896-177, moves for leave to proceed *in forma pauperis* (“IFP”) on appeal from the denial of his second 18 U.S.C.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

§ 3582(c)(2) motion to reduce the sentence imposed following his conviction of conspiracy to possess and distribute cocaine and distribution of cocaine. His motion was based on the amended sentencing guidelines for crack cocaine offenses. His first § 3582(c)(2) motion, which was based on the same grounds, was denied in 2008, because his sentencing range remained unchanged under the amended guidelines.

The district court denied the instant § 3582(c)(2) motion for the same reasons and denied the IFP motion because Davis had failed to present a good faith issue for appeal. By moving to proceed IFP on appeal, Davis is challenging the district court's determination. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997); FED. R. APP. P. 24(a)(5).

Davis has failed to brief any issues challenging the certification that his appeal is taken in bad faith, *see Brinkmann v. Dallas Cnty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987), and he has not demonstrated that his appeal involves legal points arguable on the merits, *see Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Accordingly, the IFP motion is DENIED.

This court may *sua sponte* dismiss an appeal pursuant to Fifth Circuit Rule 42.2 if "the merits are so intertwined with the certification decision as to constitute the same issue" and it is apparent that the appeal would lack merit. *Baugh*, 117 F.3d at 202 & n.24. Because Davis has failed to brief his challenge to the certification, and it is apparent that an appeal would lack merit, the appeal is DISMISSED as frivolous. *See id.*