

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

United States Court of Appeals
Fifth Circuit

FILED

May 23, 2011

Lyle W. Cayce
Clerk

No. 10-41053
Summary Calendar

VERNON KING, JR.,

Plaintiff-Appellant

v.

BRAD LIVINGSTON; STEVEN N. RICH; GENE A. KROLL; CORDLE A.
THOMAS, JR.; KEITH E. GORSUCH; SHARON D. ALLEN; BRIDGHETT G.
EDDIE,

Defendants-Appellees

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:10-CV-36

Before DENNIS, CLEMENT, and ELROD, Circuit Judges.

PER CURIAM:*

Vernon King, Jr., Texas prisoner # 590316, moves this court for authorization to proceed in forma pauperis (IFP) following the district court's denial of his motion for a preliminary injunction. Under 28 U.S.C. § 1915(g), a prisoner may not proceed IFP in a civil action or in an appeal of a judgment in a civil action if the prisoner has, on three or more prior occasions, while

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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incarcerated, brought an action or appeal that was dismissed as frivolous or for failure to state a claim, unless the prisoner is under imminent danger of serious physical injury. *Banos v. O'Guin*, 144 F.3d 883, 885 (5th Cir. 1998).

The record shows that King's complaint concerns events at one prison unit and that he has now been transferred to another unit. Accordingly, King faces no threat from the actions of these defendants. King has failed to show that he should be allowed to proceed IFP on appeal under § 1915(g) or that his appeal of the denial of a preliminary injunction presents a nonfrivolous issue. *See Carson v. Polley*, 689 F.2d 562, 586 (5th Cir. 1982). King's motion for leave to proceed IFP is denied

The facts surrounding the IFP decision are inextricably intertwined with the merits of the appeal. *See, e.g., Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997). The appeal of the judgment of the district court presents no nonfrivolous issues, and the appeal is dismissed as frivolous. 5TH CIR. R. 42.2.

IFP DENIED; APPEAL DISMISSED.