

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

United States Court of Appeals  
Fifth Circuit

**FILED**

June 15, 2011

Lyle W. Cayce  
Clerk

---

No. 10-50670  
Summary Calendar

---

ELISEO GARCIA,

Plaintiff-Appellant

v.

C.T. RANCHES,

Defendant-Appellee

---

Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 1:09-CV-24

---

Before DENNIS, CLEMENT, and ELROD, Circuit Judges.

PER CURIAM:\*

Eliseo Garcia, federal prisoner federal prisoner# 57842-180, has moved for leave to proceed in forma pauperis (IFP) on appeal from the denial of his Federal Rule of Civil Procedure 60(b) motions for relief for judgment and from the district court's dismissal of his 42 U.S.C. § 1983 complaint for lack of jurisdiction. The district court denied Garcia IFP status on appeal and certified that the appeal was not taken in good faith under § 1915(a)(3).

---

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 10-50670

By moving for leave to proceed IFP, Garcia is challenging the district court's certification that the appeal is not taken in good faith. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997). Garcia's July 12, 2010, notice of appeal from the district court's June 30, 2009, dismissal of his suit for lack of jurisdiction, is untimely. *See* FED. R. APP. P. 4(a)(1)(A). Further, Garcia has not adequately briefed and has thus abandoned any challenge to the district court's denial of IFP as to his Rule 60(b) motions. *See Brinkmann v. Dallas County Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987).

Garcia has not demonstrated that he will raise a nonfrivolous issue on appeal. *See Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983). Accordingly, Garcia's motion to proceed IFP is denied. *See Baugh*, 117 F.3d at 202 n.24. Because his appeal is frivolous, *see Howard*, 707 F.2d at 219-20, the appeal is dismissed. *See* 5TH CIR. R. 42.2.

The district court's dismissal of Garcia's claims against the defendants in *Garcia v. Henderson*, No. A-09-CA-377, as frivolous pursuant to 28 U.S.C. § 1915(e) and our dismissal of this appeal as frivolous both count as strikes for purposes of § 1915(g). *See Adepegba v. Hammons*, 103 F.3d 383, 387-88 (5th Cir. 1996). Garcia is warned that, if he accumulates three strikes pursuant to § 1915(g), he may not proceed IFP in any civil action or appeal filed while he is incarcerated or detained in any facility unless he "is under imminent danger of serious physical injury." § 1915(g).

MOTION DENIED; APPEAL DISMISSED; SANCTION WARNING ISSUED.