

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

January 12, 2022

Lyle W. Cayce
Clerk

No. 20-11200
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

SAMUEL WILLIAM MAINES,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3: 13-CV-4631

Before SMITH, HIGGINSON, and WILLETT, *Circuit Judges.*

PER CURIAM:*

Samuel William Maines, former federal prisoner # 44442-177, moves this court for leave to proceed in forma pauperis (IFP) on appeal from the denial of his motion under Federal Rule of Procedure 60(b), wherein he sought relief from the judgment denying his 28 U.S.C. § 2255 motion.

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 20-11200

Maines argues that (1) the district court erred by determining that his Rule 60(b)(1) motion was untimely, (2) he was precluded from seeking relief under Rule 60(b)(6), and, alternatively, (3) his Rule 60(b)(6) motion was untimely and did not present extraordinary circumstances that would warrant granting the motion.

By moving for authorization to proceed IFP, Maines challenges the district court's certification that his appeal is not taken in good faith. *Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997). Our inquiry into a litigant's good faith "is limited to whether the appeal involves legal points arguable on their merits (and therefore not frivolous)." *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (internal quotation marks and citations omitted). If we uphold the district court's certification that the appeal is not taken in good faith, the litigant must pay the appellate filing fee. *Baugh*, 117 F.3d at 202. Alternatively, we may dismiss the appeal sua sponte if it is frivolous. *Baugh*, 117 F.3d at 202 & n.24; 5TH CIR. R. 42.2.

Maines has not demonstrated that he will raise a nonfrivolous issue for appeal. *See Howard*, 707 F.2d at 220. Consequently, his motion for leave to proceed IFP on appeal is DENIED, and the appeal is DISMISSED as frivolous. *See Baugh*, 117 F.3d at 202 & n.24; 5TH CIR. R. 42.2.