

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

March 3, 2022

Lyle W. Cayce
Clerk

No. 21-10614
Summary Calendar

DANIEL RAY GARCIA,

Plaintiff—Appellant,

versus

REED A. FILLEY,

Defendant—Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:21-CV-11

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

PER CURIAM:*

Daniel Ray Garcia, formerly a pretrial detainee and now Texas prisoner #02354476, seeks leave to proceed in forma pauperis (IFP) on appeal and also requests the appointment of counsel. In his original 42 U.S.C. § 1983 complaint and amended complaints, Garcia asserted that the state

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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court judge hearing his then-pending criminal case was corrupt, was biased and prejudiced against him, and was making rulings that denied him due process. The district court ultimately dismissed Garcia's complaint as frivolous and for failure to state a claim pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A. The district court also denied Garcia's motion for leave to proceed IFP on appeal and certified that the appeal was not taken in good faith for the reasons given in its order of dismissal.

By moving for IFP status, Garcia is challenging the district court's certification decision. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997). Our inquiry into an appellant'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).

The district court determined that the defendant-judge was entitled to judicial immunity and that the *Younger* abstention doctrine¹ applied. In his IFP pleadings, Garcia merely repeats his claims that the defendant-judge is corrupt and biased; he does not meaningfully challenge the district court's reasons for the dismissal of his complaint or its certification that his appeal would not be in good faith. Accordingly, he has abandoned the relevant arguments for appeal. *See Brinkmann v. Dallas Cnty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987). Because Garcia has failed to present any nonfrivolous argument for appeal, *see Howard*, 707 F.2d at 220, his motion to proceed IFP on appeal is DENIED and his appeal is DISMISSED AS FRIVOLOUS. His motion for appointment of counsel also is DENIED.

The district court's dismissal of Garcia's complaint and our dismissal of this appeal count as strikes under 28 U.S.C. § 1915(g). *See Adepegba v.*

¹ *Younger v. Harris*, 401 U.S. 37, 43-44 (1971).

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Hammons, 103 F.3d 383, 388 (5th Cir. 1996), *abrogated in part on other grounds by Coleman v. Tollefson*, 575 U.S. 532, 537 (2015). Garcia is CAUTIONED that if he accumulates three strikes, he will not be allowed to proceed IFP in any civil action or appeal filed while he is detained or incarcerated in any facility unless he is under imminent danger of serious physical injury. *See* § 1915(g).