

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

October 7, 2021

Lyle W. Cayce
Clerk

No. 21-20136

KENNETH SOWELL,

Plaintiff—Appellant,

versus

JEFFERY RICHARDSON; CAPTAIN HILL; BRADLEY VESSEL;
MICHELLE NORTHCUTT; TEXAS DEPARTMENT OF CRIMINAL
JUSTICE; ESTELLE MEDICAL DEPARTMENT; H. M. PEDERSON,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:20-CV-4411

Before ELROD, OLDHAM, and WILSON, *Circuit Judges.*

PER CURIAM:*

Kenneth Sowell, Texas prisoner # 1322390, moves for leave to proceed in forma pauperis (IFP) in an appeal from the district court's dismissal of his complaint against prison officials under 42 U.S.C. § 1983, the

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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Americans with Disabilities Act, and state tort law. Sowell contends that the district court erroneously dismissed the complaint under 28 U.S.C. § 1915(g) after concluding he had three strikes. The district court denied Sowell's motion to proceed IFP, certifying that the appeal was not taken in good faith.

When a prisoner challenges the district court's certification that an appeal is not taken in good faith, "the motion must be directed solely to the trial court's reasons for the certification decision," *Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997), and our inquiry "is limited to whether the appeal involves legal points arguable on their merits" so that the appeal is not frivolous, *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (internal quotation marks and citations omitted). In a different case, we previously agreed with Sowell that he has only two strikes. *See Sowell v. Barber*, No. 20-20519, at 2 (5th Cir. Feb. 23, 2021) (unpublished); *see also Brown v. Megg*, 857 F.3d 287, 290-92 (5th Cir. 2017). Sowell thus has not yet accumulated three strikes.

Accordingly, Sowell's motion to proceed IFP on appeal is GRANTED. Because the district court's dismissal of Sowell's complaint rested on the erroneous conclusion that Sowell had three § 1915(g) strikes, the district court's order dismissing Sowell's complaint is VACATED and the case is REMANDED for further proceedings.