

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

March 15, 2022

Lyle W. Cayce
Clerk

No. 21-60601
Summary Calendar

J. C. HIGGINBOTHAM,

Petitioner—Appellant,

versus

TIMOTHY BARNES,

Respondent—Appellee.

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 1:21-CV-110

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

PER CURIAM:*

J. C. Higginbotham, Mississippi prisoner # 154421, moves for leave to proceed in forma pauperis (IFP) on appeal from the transfer of his 28 U.S.C. § 2254 application to this court as an unauthorized, successive application. By moving to proceed IFP, Higginbotham challenges the district court's

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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certification that his appeal is not taken in good faith. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997). Our inquiry “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 citation omitted).

Higginbotham’s 2013 § 2254 application was dismissed as time barred, and his argument challenging that dismissal is unpersuasive; his current application is therefore successive. *See In re Flowers*, 595 F.3d 204, 205 (5th Cir. 2009). Because the appeal lacks any issue of arguable merit, the motion to proceed IFP is DENIED, and the appeal is DISMISSED AS FRIVOLOUS. *See Baugh*, 117 F.3d at 202 n.24; *Howard*, 707 F.2d at 220; *see also* 5TH CIR. R. 42.2.