

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

October 27, 2022

Lyle W. Cayce
Clerk

No. 22-40054

ALEX ADAMS,

Plaintiff—Appellant,

versus

UNKNOWN BEUSCH, *Sergeant*; UNKNOWN BOYKIN, *Sergeant*;
UNKNOWN BLAIR, *Sergeant*; UNKNOWN LANE, *Warden*; UNKNOWN
BACK,

Defendants—Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:21-CV-334

Before STEWART, DENNIS, and WILLETT, *Circuit Judges*.

PER CURIAM:*

Alex Adams, Texas prisoner # 1181239, requests leave to proceed in forma pauperis (IFP) in this appeal of the dismissal of his 42 U.S.C. § 1983 suit without prejudice for want of prosecution pursuant to Federal Rule of

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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Civil Procedure 41(b). He also moves for appointment of counsel and leave to file exhibits.

To proceed IFP, Adams must demonstrate financial eligibility and a nonfrivolous issue for appeal. *See Jackson v. Dall. Police Dep't*, 811 F.2d 260, 261 (5th Cir. 1986). Adams has not shown that payment of the \$505 appellate filing fee would result in undue hardship or deprivation of the necessities of life. *See* 28 U.S.C. § 1915(a)(2); *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948).

Moreover, we may sua sponte dismiss an appeal as frivolous. *See* 5TH CIR. R. 42.2; *see also Baugh v. Taylor*, 117 F.3d 197, 202 n.24 (5th Cir. 1997). In this case, Adams failed to comply with two court orders over the course of five months, despite receiving multiple warnings of the possibility of dismissal if he failed to comply. Therefore, he cannot make a nonfrivolous attempt to show that the district court abused its discretion by dismissing his case without prejudice. *See Larson v. Scott*, 157 F.3d 1030, 1032 (5th Cir. 1998); *McNeal v. Papasan*, 842 F.2d 787, 789-90 (5th Cir. 1988).

Because Adams has not demonstrated financial eligibility and that his appeal involves “legal points arguable on their merits,” *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (internal quotation marks and citation omitted), his motion to proceed IFP is DENIED, and the appeal is DISMISSED as frivolous. *See* 5TH CIR. R. 42.2. His motions to appoint counsel and for leave to file exhibits are DENIED as moot.