

United States Court of Appeals for the Fifth Circuit

No. 22-40164
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
December 28, 2022

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ZACK ZEMBLIEST SMITH, III,

Defendant—Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:94-CR-68-1

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

PER CURIAM:*

Zack Zembliest Smith, III, federal prisoner # 04838-078, moves for leave to proceed in forma pauperis (IFP) to appeal the district court's denial of his motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A). Smith also moves this court for leave to amend his motion for compassionate release. His motion for leave to amend is DENIED, and we do not consider

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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any grounds for compassionate release in the proposed amended complaint that are raised for the first time on appeal. *See United States v. Thompson*, 984 F.3d 431, 432 n.1 (5th Cir. 2021); *Cinel v. Connick*, 15 F.3d 1338, 1346 (5th Cir. 1994).

To proceed IFP on appeal, Smith must demonstrate both financial eligibility and a nonfrivolous issue for appeal. *See Carson v. Polley*, 689 F.2d 562, 586 (5th Cir. 1982). An issue is nonfrivolous if it is arguable on its merits. *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Here, the district court found that Smith had not shown extraordinary and compelling reasons justifying a reduction in his sentence and that the 18 U.S.C. § 3553(a) factors did not support his release. We conclude that Smith has failed to identify a nonfrivolous basis for challenging the district court's determination that the § 3553(a) factors did not support his release. *See United States v. Chambliss*, 948 F.3d 691, 693-94 (5th Cir. 2020).

Therefore, we DISMISS Smith's appeal as frivolous and DENY the motion to proceed IFP on appeal. *See Baugh v. Taylor*, 117 F.3d 197, 202 & n.24 (5th Cir. 1997); 5TH CIR. R. 42.2.