

United States Court of Appeals for the Fifth Circuit

No. 26-50108
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

August 26, 2026

Lyle W. Cayce
Clerk

DUSTIN ALLEN BIGGERSTAFF,

Plaintiff—Appellant,

versus

B. J. BROWN, *Defense Attorney B.J. Brown Attorney at Law*; JUSTIN LOW, *District Judge 161st District Court Ector County*; DUSTY GALLIVAN, *District Attorney Ector County D.A.*; KORTNEY WILLIAMS, *Assistant District Attorney Ector County D.A.*; CODY DUNSTAN, *CID Special Agent DPS*; DANIEL SARABIA, *CID Special Agent DPS*,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:25-CV-494

Before GRAVES, WILSON, and RAMIREZ, *Circuit Judges*.

PER CURIAM:*

Dustin Allen Biggerstaff, a Texas prisoner currently held in Ector County Detention Center, moves for leave to proceed in forma pauperis

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

No. 26-50108

(IFP) on appeal from the dismissal of his 42 U.S.C. § 1983 suit alleging violations of his civil rights arising from his arrest and criminal prosecution. The district court dismissed the suit as frivolous and for failure to state a claim, concluding that the defendants were entitled to immunity and that the claims were barred under *Heck v. Humphrey*, 512 U.S. 477, 486–87 (1994). *See* 28 U.S.C. §§ 1915(e)(2)(B)(i)-(ii) and 1915A(b)(1).

Through his IFP motion, Biggerstaff challenges the district court’s determination that the appeal is not taken in good faith. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997). Our inquiry, therefore, “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) (citation omitted).

Biggerstaff makes no substantive attempt to address the district court’s reasons for dismissing his suit. *See Yohey v. Collins*, 985 F.2d 222, 225 (5th Cir. 1993); *Brinkmann v. Dallas Cnty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987). He thus fails to identify a nonfrivolous issue for appeal. *See Howard*, 707 F.2d at 220.

We DENY the IFP motion and DISMISS the appeal as frivolous. *See Baugh*, 117 F.3d at 202 n.24; 5TH CIR. R. 42.2. We likewise DENY Biggerstaff’s motions for appointment of counsel.

The district court’s dismissal of this case as frivolous and for failure to state a claim and our dismissal of the appeal as frivolous both count as strikes for purposes of § 1915(g). *See Adepegba v. 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). Biggerstaff has also accrued a prior strike under § 1915(g). *See Biggerstaff v. Curry*, No. 7:25-cv-545 (W.D. Tex. Dec. 2, 2025) (unpublished). As he now has three strikes, Biggerstaff is BARRED from proceeding IFP in any civil action or appeal filed in a court of the United

No. 26-50108

States while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. *See* 28 U.S.C. § 1915(g). He is also WARNED that any pending or future frivolous or repetitive filings in this court or any court subject to this court's jurisdiction may subject him to additional sanctions, and he is DIRECTED to review all pending matters and move to dismiss any that are frivolous, repetitive, or otherwise abusive.