

United States Court of Appeals
for the Fifth Circuit

No. 26-50157
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

August 26, 2026

Lyle W. Cayce
Clerk

DUSTIN ALLEN BIGGERSTAFF,

Plaintiff—Appellant,

versus

MIKE GRIFFIS, *Sheriff*; FNU ADELUOLA, *Sergeant*,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:25-CV-440

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 (IFP) on appeal from the dismissal of his 42 U.S.C. § 1983 suit alleging that the defendants violated his civil rights by failing to provide him with a bottom bunk despite his medical need for such accommodation. The district court

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

No. 26-50157

dismissed the suit without prejudice for failure to exhaust his administrative remedies.

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 motion for appointment of counsel.

Our dismissal of the appeal as frivolous counts as a strike for purposes of 28 U.S.C. § 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). Considering Biggerstaff's other three prior strikes, this court has imposed a § 1915(g) pleading bar. *See Biggerstaff v. Brown*, No. 26-50108; 28 U.S.C. § 1915(g). We reiterate that Biggerstaff is BARRED from proceeding IFP in any civil action or appeal filed in a court of the United States while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. We again WARN Biggerstaff 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

No. 26-50157

sanctions, and we again DIRECT him to review all pending matters and move to dismiss any that are frivolous, repetitive, or otherwise abusive.