

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7286
Conference Calendar

CHARLES L. STRINGER, ET AL.,

Plaintiffs,

CHARLES L. STRINGER,

Plaintiff-Appellant,

versus

MALCOLM E. MCMILLIN, Sheriff,
Hinds County, Mississippi, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. CA-J92-0617(W)(C)
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(March 22, 1994)

Before KING, DAVIS, and DeMOSS, Circuit Judges.

BY THE COURT:

IT IS ORDERED that appellant Charles L. Stringer's motion for leave to appeal in forma pauperis (IFP) is DENIED. Stringer has not presented a nonfrivolous issue on appeal. Thomas v. Kipperman, 846 F.2d 1009, 1010 (5th Cir. 1988). Because the appeal is frivolous, it is DISMISSED. See 5th Cir. R. 42.2.

A complaint filed in forma pauperis (IFP) can be dismissed by the court sua sponte if the complaint is frivolous. 28 U.S.C. § 1915(d). A complaint is "frivolous where it lacks an arguable basis either in law or in fact." Denton v. Hernandez,

___U.S.___, 112 S.Ct. 1728, 1733, 118 L.Ed.2d 340 (1992) (quoting Neitzke v. Williams, 490 U.S. 319, 325, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989)). This Court reviews a § 1915(d) dismissal for abuse of discretion. Denton, 112 S.Ct. at 1734. For this Court to grant Stringer leave to proceed IFP on appeal, Stringer must present a nonfrivolous issue whether the district court abused its discretion. Carson v. Polley, 689 F.2d 562, 586 (5th Cir. 1982).

Stringer alleges his constitutional rights were violated when the defendants transferred him from Hinds County Detention Center to the state penitentiary, instead of allowing him to remain in the county of his conviction during the pendency of his appeal, as provided by the statutory language of Miss. Code. Ann. §§ 9919-39 and 9919-41 (1972).

In an unpublished opinion, this Court has previously determined that §§ 99-19-39 and 99-19-41 do not create either a due process right or a protected liberty interest in a prisoner's confinement to the county jail where he was convicted pending the disposition of his direct appeal. Moore v. Puckett, No. 92-7095, p. 3-4 (5th Cir. July 31, 1992). Unpublished opinions are binding precedent. See Pruitt v. Levi Strauss & Co., 932 F.2d 458, 465 (5th Cir. 1991); Fifth Cir. Loc. R. 47.5.3.