IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
F I L E D
August 26, 2009
Charles R. Fulbruge III
Clerk

No. 08-30872
Summary Calendar

COINDELL BRYANT,

Plaintiff-Appellant

v.

DOUG GOSS, Sergeant; MICKEY GUIDRY, Sergeant; JEFFREY TRAVIS, Warden,

Defendants-Appellees

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:06-CV-2166

Before BENAVIDES, PRADO, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Coindell Bryant, Louisiana prisoner # 459459, moves this court for leave to appeal in forma pauperis (IFP) following the dismissal of his civil rights complaint. He also moves this court for the appointment of counsel on appeal.

Bryant's motion for leave to appeal IFP is construed as a challenge to the district court's determination that the appeal is not taken in good faith. *See*

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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Baugh v. Taylor, 117 F.3d 197, 202 (5th Cir. 1997). This court's inquiry into whether the appeal is taken in good faith "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). If the court upholds the district court's certification that the appeal is not taken in good faith, Bryant must pay the appellate filing fee or the appeal will be dismissed for want of prosecution. *See Baugh*, 117 F.3d at 202. However, if the appeal is frivolous, this court may dismiss it sua sponte under 5th Cir. R. 42.2. *Id.* at n.24.

To the extent that Bryant has not waived the argument by failing to properly brief it, the record before this court supports the district court's determination that Bryant's excessive-force claim properly was dismissed for failure to exhaust. *See Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993); 42 U.S.C. § 1997e. Because the appeal does not present any legal points arguable on their merits, Bryant's motion for leave to proceed IFP is denied and the appeal dismissed as frivolous. *See Baugh*, 117 F.3d at 202 & n. 24. Bryant's motion for the appointment of counsel also is denied.

MOTIONS DENIED; APPEAL DISMISSED.