

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 18-40218

United States Court of Appeals
Fifth Circuit

FILED

February 18, 2019

Lyle W. Cayce
Clerk

ANTHONY L. PIERCE,

Plaintiff-Appellant

v.

LISA GARRETT; SUSAN CUNNINGHAM,

Defendants-Appellees

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:17-CV-518

Before JONES, ELROD, and ENGELHARDT, Circuit Judges.

PER CURIAM:*

Anthony L. Pierce, Texas prisoner # 1813502, moves for leave to proceed in forma pauperis (IFP). He wishes to appeal the dismissal of his 42 U.S.C. § 1983 lawsuit as frivolous and for failure to state a claim upon which relief may be granted. By moving to proceed IFP, Pierce is challenging the district court's certification that his appeal is not taken in good faith. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997). Our inquiry into an appellant's good faith "is limited to whether the appeal involves legal points arguable on their

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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merits (and therefore not frivolous).” *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). We may dismiss the appeal if it is frivolous. *See Baugh*, 117 F.3d at 202 n.24; 5TH CIR. R. 42.2. Our review of the district court’s dismissal of Pierce’s complaint as frivolous and for failure to state a claim is de novo. *Geiger v. Jowers*, 404 F.3d 371, 373 (5th Cir. 2005).

In his filings to this court, Pierce renews his claims for declaratory and injunctive relief and the return of his personal property, asserting that the confiscation by correctional officers was in contravention of prison policy and violated due process. However, the district court correctly dismissed his complaint under the *Parratt/Hudson* doctrine because Pierce had an adequate post-deprivation remedy, to wit: a state court lawsuit for conversion. *See Allen v. Thomas*, 388 F.3d 147, 149 (5th Cir. 2004); *Murphy v. Collins*, 26 F.3d 541, 543-44 (5th Cir. 1984). Thus, Pierce has failed to show that his appeal involves any arguably meritorious issue. *See Howard*, 707 F.2d at 220. Accordingly, his motion for leave to proceed IFP on appeal is denied, and his appeal is dismissed as frivolous. *See Baugh*, 117 F.3d at 202; 5TH CIR. R. 42.2.

The dismissal of this appeal as frivolous and the district court’s dismissal of Pierce’s § 1983 complaint as frivolous count as two strikes under 28 U.S.C. § 1915(g). *See Coleman v. Tollefson*, 135 S. Ct. 1759, 1761-64 (2015); *Adepegba v. Hammons*, 103 F.3d 383, 388 (5th Cir. 1996). In addition, Pierce has received a strike as a result of the district court’s dismissal as frivolous of his civils rights complaint in *Pierce v. Livingston*, No. 6:16-cv-1105 (E.D. Tex. Apr. 16, 2017). Pierce is informed that he is now barred from proceeding IFP in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is “under imminent danger of serious physical injury.” § 1915(g).

IFP MOTION DENIED; APPEAL DISMISSED; SANCTION IMPOSED.