

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

INDIANA PROTECTION AND ADVOCACY)
SERVICES COMMISSION,)
JOSHUA HARRISON,)
GREGGORY SIMS,)
JAMES PANOZZO,)

Plaintiffs,)

v.)

COMMISSIONER, INDIANA DEPARTMENT)
OF CORRECTION,)

Defendant.)

No. 1:08-cv-1317-TWP-MJD

CA #11-1504

ENTRY

This matter is before the Court on John E. Thomas' Motion for Leave to Proceed on Appeal In Forma Pauperis. (Dkt. No. 169). For the reasons stated below, the Motion is Denied.

Mr. Thomas, a non-party to this matter is a state prisoner who filed a Motion to have a 3-judge panel convened to adjudicate his claims (Dkt. No. 165). His Motion was denied because Thomas is not a party to the case and the circumstances warranting a 3-judge panel were not presented. Mr. Thomas has filed an appeal from this ruling. The appeal has been docketed as No. 11-1504 and the short record on appeal has been prepared and transmitted.

An appeal may not be taken *in forma pauperis* if the trial court certifies that the appeal is not taken in good faith. 28 U.S.C. § 1915; see *Coppedge v. United States*, 369 U.S. 438 (1962). "Good faith within the meaning of § 1915 must be judged by an objective, not a subjective, standard. *Id.* There is no objectively reasonable argument which Mr. Thomas could present to argue that resolution of his motion for a 3-judge panel was erroneous. Pursuant to the Prison Litigation Reform Act (PLRA), a prisoner is ineligible to proceed in forma pauperis based on his prior civil litigation history in filing actions that were dismissed as frivolous, malicious, or failing to state a claim. The order in question is not

appealable at this time and Mr. Thomas has “struck out” pursuant to 28 U.S.C. § 1915(g)¹. This latter factor renders Mr. Thomas ineligible to proceed *in forma pauperis*. In pursuing an appeal, therefore, Mr. Thomas “is acting in bad faith . . . [because] to sue in bad faith means merely to sue on the basis of a frivolous claim, which is to say a claim that no reasonable person could suppose to have any merit.” *Lee v. Clinton*, 209 F.3d 1025, 1026 (7th Cir. 2000).

Based on the foregoing, Mr. Thomas’ request for leave to proceed on appeal *in forma pauperis* (Dkt. No. 169) is **denied**.

IT IS SO ORDERED.

Date: 03/28/2011

Distribution:

Kenneth J. Falk
kfalk@aclu-in.org

David Ross Smith
drsmith@ipas.in.gov

Gavin Minor Rose
grose@aclu-in.org

Karen T. Davis
ktdavis@ipas.in.gov

David A. Arthur
David.Arthur@atg.in.gov

John Eric Thomas
137153
Wabash Valley Correctional Facility
6908 S. Old US Highway 41
Carlisle, IN 47838.

¹In *Evans v. Illinois Department of Corrections*, 150 F.3d 810 (7th Cir. 1998), it was noted that a prisoner-litigant in these circumstances is entitled to know the cases the court relies on when making the 3-strikes determination. For Mr. Thomas’ reference, the cases on which the court relies in finding three or more “strikes” consist of the following:

Thomas v. Gant, No. IP 98-1334-C-T/K (S.D.Ind. May 23, 2002)(denying *in forma pauperis* on appeal); No. 02-2484 (7th Cir. April 2, 2003)(same)

Thomas v. Marsh, TH 02-177-C-T/F (S.D. Ind. July 2, 2002)(action dismissed for purposes of 28 U.S.C. § 1915(g))

Thomas v. Marsh, TH 02-177-C-T/F (S.D.Ind. July 2, 2002)(denying *in forma pauperis* on appeal).