

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

February 11, 2021

Lyle W. Cayce
Clerk

No. 18-11414

JOHN PATRICK NEWTON,

Plaintiff—Appellant,

versus

UNITED STATES OF AMERICA; THE DEPARTMENT OF JUSTICE;
THE FEDERAL BUREAU OF PRISONS; D.J. HARMON, *Warden in his
individual and professional capacity*; DOCTOR CAPPS, *in his individual and
his professional capacity*,

Defendants—Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:17-CV-1419

Before WILLETT, HO, and DUNCAN, *Circuit Judges.*

PER CURIAM:*

John Patrick Newton, federal prisoner # 56067-112, moves for leave to proceed in forma pauperis (IFP) in this appeal from the dismissal of his complaint raising claims of medical malpractice, negligence, and deliberate

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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indifference. The district court dismissed Newton's claims raised under *Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), without prejudice for failure to exhaust administrative remedies. His claims raised under the Federal Tort Claims Act were dismissed with prejudice as barred by the statute of limitations. By moving to appeal IFP, Newton challenges the certification that his appeal is not in good faith. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997).

Newton argues that his claims were timely filed and that he exhausted his administrative remedies. His conclusory assertions fail to show that he will raise a nonfrivolous issue on appeal. *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983).

Accordingly, the motion for leave to appeal IFP is DENIED, and the appeal is DISMISSED as frivolous. *See Baugh*, 117 F.3d at 202 n.24; 5TH CIR. R. 42.2. The dismissal of this appeal counts as one strike under 28 U.S.C. § 1915(g). *See Coleman v. Tollefson*, 135 S. Ct. 1759, 1763-64 (2015). Newton has one previous strike. *See Newton v. United States*, 733 F. App'x 196, 197 (5th Cir. July 30, 2018). Newton is WARNED that if he accumulates three strikes, he will not be allowed to proceed IFP in any civil action or appeal filed while he is detained or incarcerated in any facility unless he is under imminent danger of serious physical injury. *See* § 1915(g).