

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
VALDOSTA DIVISION**

DARIAN TOWNES,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. 7:24-cv-36-WLS-ALS
	:	
HEATHER DAVIS, <i>et al.</i> ,	:	
	:	
Defendants.	:	

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**REPORT AND RECOMMENDATION**

On March 28, 2024, Plaintiff filed a complaint asserting claims under 42 U.S.C. § 1983. (Doc. 1).<sup>1</sup> After a protracted effort to get Plaintiff to recast his complaint and to either pay the filing fee or move to proceed *in forma pauperis* (“IFP”), on June 25, 2025, the Court ultimately dismissed the complaint for Plaintiff’s failure to comply with the Court’s orders, for failure to state a claim, and for maliciously continuing to file frivolous lawsuits. (Doc. 33). On August 27, 2025, Plaintiff filed an appeal, and he moved for leave to appeal IFP. (Docs. 38, 39). On August 29, 2025, the Court denied Plaintiff leave to appeal IFP. (Doc. 42). On October 7, 2025, the United States Court of Appeals for the Eleventh Circuit dismissed Plaintiff’s appeal for want of prosecution, after which Plaintiff filed a second appeal. (Docs. 43, 44). On November 4, 2025, the Eleventh Circuit dismissed Plaintiff’s second appeal because he failed to pay the filing fee or move in this Court for leave to appeal IFP. (Doc. 48). On November 14, 2025, Plaintiff filed a second motion to appeal IFP. (Doc. 49). For the following reasons, it is recommended that Plaintiff’s second motion to appeal IFP be denied.

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<sup>1</sup> Plaintiff filed his complaint in the United States District Court for the Northern District of Georgia. (Doc. 1). On April 19, 2024, that court transferred the complaint to this Court. (Docs. 2, 3).

## DISCUSSION

The Court considers applications to appeal IFP under 28 U.S.C. § 1915, which provides that an individual may bring an action or appeal without prepayment of the fees if he “submits an affidavit” that shows “that the person is unable to pay such fees or give security therefor.” 28 U.S.C. § 1915(1). However, “[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.” 28 U.S.C. § 1915(a)(3). Federal Rule of Appellate Procedure 24 similarly requires a party wishing to proceed IFP to file an affidavit which shows “the party’s inability to pay or to give security for fees and costs[.]” Fed. R. App. P. 24(a)(1)(A). Under the appellate rules, if a district court denies a motion for leave to appeal IFP, the court “must state its reasons in writing.” Fed. R. App. P. 24(a)(2).

The Court is, thus, required to make two determinations. First, the Court must decide whether the applicant is able to pay the appeal filing fee. Second, the Court must decide whether the appeal meets the good faith requirement. Plaintiff has not met either requirement. Consequently, his second motion for leave to appeal IFP should be denied.

First, Plaintiff has not established that he is unable to pay the filing fee. As the Court noted when it denied his first motion for leave to appeal IFP, Plaintiff is well aware of the requirements to obtain IFP status. (Doc. 42, at 3) (quoting Doc. 33, at 5). Yet, Plaintiff did not submit any documentation showing that he is unable to pay the appeal filing fee. Instead, Plaintiff states that his complaint “is grounded in binding law” and thus it overcomes any procedural bar. (Doc. 49, at 2). That conclusory – and erroneous – statement is insufficient to establish that Plaintiff is unable to pay the appellate filing fee. As such, Plaintiff has not demonstrated that he cannot pay the fee required to appeal.

Second, Plaintiff does not meet the good faith requirement. “Good faith” is “judged by an objective standard.” *Coppedge v. United States*, 369 U.S. 438, 445 (1962). Plaintiff can demonstrate good faith by seeking appellate review of a non-frivolous issue. *Id.* Frivolous issues are issues “‘without arguable merit either in law or fact.’”<sup>2</sup> *Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002) (citations omitted), *overruled on other grounds by Hoefer v. Marks*, 993 F.3d 1353, 1363-64 (11th Cir. 2021). Put another way, “a case is frivolous . . . when it appears the plaintiff ‘has little or no chance of success.’” *Carroll v. Gross*, 984 F.2d 392, 393 (11th Cir. 1993) (citations omitted). In determining “whether an IFP appeal is frivolous, a district court determines whether there is ‘a factual and legal basis . . . for the asserted wrong, however inartfully pleaded.’” *Sun*, 939 F.2d at 925 (citations omitted).

Under Federal Rule of Appellate Procedure 24(a)(1)(C), Plaintiff must also include a statement of issues that he intends to appeal. In his second motion to appeal IFP, Plaintiff asserts that the “subject matter” of his complaint “is necessary” to determine his rights. (Doc. 49, at 2). However, as the Court explained to Plaintiff – repeatedly in this case and in two prior cases – the Court has no power to commute Plaintiff’s state sentence. (Doc. 33, at 7). As such, the Court finds that Plaintiff raises no issues with arguable merit for appeal and that Plaintiff’s appeal is frivolous. Since Plaintiff’s appeal is not brought in good faith, the Court recommends that Plaintiff’s second motion to appeal IFP (Doc 49) be denied.

If this Recommendation is adopted, the Clerk shall provide the notice required under Federal Rule of Appellate Procedure 24(a)(4). If at that time Plaintiff wishes to proceed with his appeal, he must pay the entire \$605.00 appellate filing fee, or he may file a motion for leave to appeal IFP with the United States Court of Appeals for the Eleventh Circuit in accordance with

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<sup>2</sup> Arguable merit “means capable of being convincingly argued.” *Sun v. Forrester*, 939 F.2d 924, 925 (11th Cir. 1991) (quotation marks and citations omitted).

Federal Rule of Appellate Procedure 24(a)(5).

### CONCLUSION

For the foregoing reasons, the Court recommends that Plaintiff's second motion for leave to appeal *in forma pauperis* (Doc. 49) be **DENIED**. Pursuant to 28 U.S.C. § 636(b)(1), Plaintiff may serve and file written objections to this Recommendation, or seek an extension of time to file objections, within fourteen (14) days after being served with a copy hereof. Any objection should be no longer than TWENTY (20) PAGES in length. *See* M.D. Ga. L.R. 7.4. The district judge shall make a de novo determination of those portions of the Recommendation to which objection is made. All other portions of the Recommendation may be reviewed for clear error.

Plaintiff is hereby notified that, pursuant to Eleventh Circuit Rule 3-1, "[a] party failing to object to a magistrate judge's findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the consequences on appeal for failing to object. In the absence of a proper objection, however, the court may review on appeal for plain error if necessary in the interests of justice."

**SO RECOMMENDED**, this 15th day of December, 2025.

s/ **ALFREDA L. SHEPPARD**  
UNITED STATES MAGISTRATE JUDGE