

U.S. Supreme Court

In Re: Tim Bennett,
Plaintiff/Appellant

CAUSE NO: _____

FIRST MOTION TO FILE EXTENSION OF TIME

Comes now, Tim Bennett, Plaintiff/Appellant, an appeal of a decision from the U.S. Fifth Circuit Court of Appeals. Plaintiff/Appellant needs an additional 60 days to acquire the Supreme Court rules and/or forms to file a Writ of Certiorari to this Court. The additional time is also needed to locate someone for assistance who can explain the rules and requirements for filing a Writ, in Fifth Circuit Cause No. 21-40546, under the Family Code.

PRAYER

Plaintiff/Appellant Bennett requests this 60-day extension of time be granted to file a Writ, and prays for liberality in these pleadings.

Respectfully,

Tim Bennett, 1880044

Pro Se

UNSWORN DECLARATION

I, Tim Bennett, Plaintiff/Appellant, swear the above and foregoing is true and correct under penalty of perjury.

Signed the 30th day of July, 2022.

Tim Bennett, 1880044
Pro Se

CERTIFICATE OF SERVICE

I, Tim Bennett, Plaintiff/Appellant, have placed this Motion for Extension of Time, addressed to the U.S. Supreme Court in Washington D.C., in the U.S. Mailbox on the Polunsky Unit, 3872 Fm 350 South, Livingston, Tx. 77351, first class, postage paid, on the 30th day of July, 2022.

Tim Bennett, 1880044
Pro Se.
3872 Fm 350 South
Livingston, Tx. 77351

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

April 18, 2022

Lyle W. Cayce
Clerk

No. 21-40546

TIM BRANDT,

Plaintiff—Appellant,

versus

PEGODA, *ATC Supervisor,*

Defendant—Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 9:20-CV-211

Before JONES, DUNCAN, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Tim Brandt, Texas prisoner # 1880044, has filed a motion for leave to proceed in forma pauperis (IFP) on appeal from the order dismissing as moot his motion for a temporary restraining order or for a preliminary injunction, which the district court also construed as an action under 42 U.S.C. § 1983. In his motion and complaint, he alleged that he was denied access to the

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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courts because he was unable to file a class action suit on behalf of prisoners related to the alleged denial of their ability to make child support payments. Brandt asserted that his ability to mail the suit as a single filing rather than as a piecemeal submission was being frustrated. The district court denied his IFP motion and certified that his appeal was not in good faith.

By moving to proceed IFP, Brandt is challenging the district court's certification decision. *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 merits (and therefore not frivolous)." *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (internal quotation marks and citation omitted).

On appeal, Brandt addresses only whether he is financially eligible to proceed IFP and discusses his indigence. He vaguely alludes to his access-to-the-courts claim and the class action suit underlying that claim but presents no meaningful argument challenging the finding that his claim was moot in light of the mailing of the suit in a single filing. Because Brandt briefs no argument addressing the district court's analysis of his claims and fails to identify any error therein, he has abandoned a challenge to the certification decision and to the district court's treatment and disposition of his filings. *See Brinkmann v. Dallas Cnty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987). Accordingly, the motion to proceed 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 as frivolous counts as a strike under 28 U.S.C. § 1915. *See* § 1915(g); *Adepegba v. Hammons*, 103 F.3d 383, 388 (5th

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Cir. 1996), *abrogated in part on other grounds by Coleman v. Tollefson*, 575 U.S. 532, 537 (2015). Brandt is WARNED that if he accumulates three strikes, he may not proceed 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. *See* § 1915(g).

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

April 18, 2022

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing
or Rehearing En Banc

No. 21-40546 Brandt v. Pegoda
USDC No. 9:20-CV-211

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and 5th Cir. R. 35, 39, and 41 govern costs, rehearings, and mandates. **5th Cir. R. 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 and 5th Cir. R. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. 5th Cir. R. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

Sincerely,

LYLE W. CAYCE, Clerk

A handwritten signature in cursive script, appearing to read "Nancy F. Dolly".

By: Nancy F. Dolly, Deputy Clerk

Enclosure(s)

Mr. Tim Brandt