

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 17-30207

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United States Court of Appeals  
Fifth Circuit

**FILED**

November 7, 2017

Lyle W. Cayce  
Clerk

TROY DAVIS,

Plaintiff–Appellant,

versus

JONATHAN A. ROUNDTREE; KENNETH NORRIS; COLLINS, Doctor,

Defendants–Appellees.

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Appeal from the United States District Court  
for the Middle District of Louisiana  
No. 3:12-CV-41

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Before SMITH, WIENER, and HAYNES, Circuit Judges.

PER CURIAM:\*

Troy Davis, Louisiana prisoner #356886, filed this 42 U.S.C. § 1983 suit

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\* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

to seek redress for alleged acts of retaliation and deliberate indifference to serious medical needs as well as the disposition of his grievances. The district court granted the defendants' motion for summary judgment, and we dismissed the resulting appeal as frivolous. Davis moved for a new trial, contending that his right to a jury trial was infringed. The district court denied the motion, and Davis moves this court for authorization to proceed *in forma pauperis* ("IFP") on appeal.

By moving to proceed IFP, Davis 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 merits (and therefore not frivolous)." *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (internal quotation marks and citation omitted). We may dismiss the appeal if it is frivolous. *See Baugh*, 117 F.3d at 202 n.24; 5TH CIR. R. 42.2.

Davis's motion is best construed as arising under Federal Rule of Civil Procedure 60(b)(6) because it was filed more than 28 days after entry of judgment and does not fit into any of the other subsections of that rule. *See Demahy v. Schwarz Pharma, Inc.*, 702 F.3d 177, 182 n.2 (5th Cir. 2012); *Hess v. Cockrell*, 281 F.3d 212, 216 (5th Cir. 2002); Rule 60(b). The denial of a Rule 60(b)(6) motion is reviewed for abuse of discretion. *Diaz v. Stephens*, 731 F.3d 370, 374 (5th Cir. 2013). To meet that standard, it is not enough that the movant show "that the granting of relief might have been permissible, or even warranted." *Id.* (internal quotation marks and citation omitted). Instead, "denial must have been so unwarranted as to constitute an abuse of discretion." *Id.* (internal quotation marks and citation omitted).

Our review of the record and Davis's arguments shows that that standard has not been met. Because Davis did not demonstrate a genuine issue of

material fact, he was not entitled to a jury trial. *See Plaisance v. Phelps*, 845 F.2d 107, 108 (5th Cir. 1988). He has failed to establish that his appeal involves any arguably meritorious issue. *See Howard*, 707 F.2d at 220.

Accordingly, the motion for leave to proceed IFP on appeal is DENIED, and the appeal is DISMISSED as frivolous. *See Baugh*, 117 F.3d at 202 n.24; 5TH CIR. R. 42.2.

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D.C. Docket No. 3:12-CV-41

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TROY DAVIS,

Plaintiff - Appellant

v.

JONATHAN A. ROUNDTREE; KENNETH NORRIS; COLLINS, Doctor,

Defendants - Appellees

Appeal from the United States District Court for the  
Middle District of Louisiana

Before SMITH, WIENER, and HAYNES, Circuit Judges.

J U D G M E N T

This cause was considered on the record on appeal.

It is ordered and adjudged that the appeal is dismissed as frivolous.



Certified as a true copy and issued  
as the mandate on Nov 29, 2017

Attest:

*Lyle W. Cayce*  
Clerk, U.S. Court of Appeals, Fifth Circuit

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

TROY DAVIS (#356886)

CIVIL ACTION

VERSUS

JONATHAN A. ROUNDTREE, ET AL.

NO. 12-41-JJB-SCR

ORDER

Before the Court are two motions filed by the plaintiff seeking to proceed *in forma pauperis* on appeal. Record document numbers 104 and 105.

The Court previously entered an Order addressing the plaintiff's entitlement to proceed *in forma pauperis* on appeal.<sup>1</sup> In addition, a review of the records of the United States Court of Appeals for the Fifth Circuit reflects that the plaintiff's appeal was dismissed as frivolous on June 25, 2015, and that an application for rehearing *en banc* before that Court was denied on August 6, 2015.<sup>2</sup>

Therefore;

IT IS ORDERED that the plaintiff's motions to proceed *in forma*

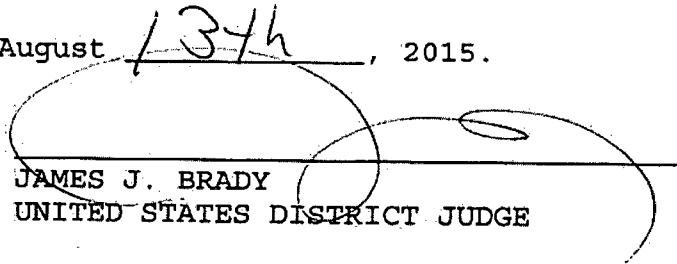
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<sup>1</sup> Record document number 102.

<sup>2</sup> *Davis v. Roundtree, et al.*, Fifth Circuit Docket No. 14-31135.

*pauperis* on appeal, record document numbers 104 and 105, are  
DENIED AS MOOT.

Baton Rouge, Louisiana, August 13<sup>th</sup>, 2015.



JAMES J. BRADY  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

TROY DAVIS

CIVIL ACTION

VERSUS

NO. 12-41-JJB

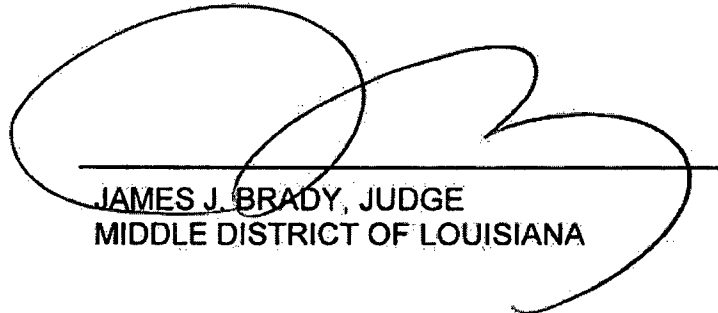
JONATHAN A. ROUNDTREE,  
ET AL.

**ORDER**

Considering the motion by plaintiff "to Reopen the Time to File Appeal" (doc. 108);

IT IS ORDERED that said motion be DENIED, in view of the fact that plaintiff has been dismissed as frivolous (doc. 107).

Baton Rouge, Louisiana, August 25, 2015.



A handwritten signature in black ink, consisting of a large loop followed by a series of smaller, fluid strokes, is written over a horizontal line.

JAMES J. BRADY, JUDGE  
MIDDLE DISTRICT OF LOUISIANA