

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

MARVIN FLEMINGS,

Plaintiff,

vs.

ILLINOIS DEPARTMENT OF
CORRECTIONS and ATTORNEY
GENERAL OF THE STATE OF ILLINOIS,

Defendants.

Case No. 11-cv-953-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on plaintiff's motions for leave to appeal *in forma pauperis* (Doc. 19) and for appointment of counsel on appeal (Doc. 20).

A federal court may permit a party to proceed on appeal without full pre-payment of fees provided the party is indigent and the appeal is taken in good faith. 28 U.S.C. § 1915(a)(1) & (3); Fed. R. App. P. 24(a)(3)(A). A frivolous appeal cannot be made in good faith. *Lee v. Clinton*, 209 F.3d 1025, 1026-27 (7th Cir. 2000). The test for determining if an appeal is in good faith or not frivolous is whether any of the legal points are reasonably arguable on their merits. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989) (citing *Anders v. California*, 386 U.S. 738 (1967)); *Walker v. O'Brien*, 216 F.3d 626, 632 (7th Cir. 2000).

Here, plaintiff's complaint did not survive threshold review because plaintiff stated no claim plausibly suggesting a right to relief against the named defendants. As such, the Court dismissed plaintiff's case and directed the Clerk of Court to mail plaintiff the proper form with which to file his complaint. No reasonable person could argue that plaintiff's complaint plausibly suggested a right to relief against the named defendants. Therefore, the Court

CERTIFIES that this appeal is not taken in good faith and accordingly **DENIES** the motion for leave to proceed on appeal *in forma pauperis* (Doc. 19).

With respect to plaintiff's motion for appointment of counsel on appeal (Doc. 20), this Court does not have the authority to appoint counsel on appeal; only the Court of Appeals can make such appointments once a notice of appeal has been filed. Accordingly, the Court hereby **DIRECTS** the Clerk of Court to **TRANSFER** the pending motion (Doc. 20) to the Court of Appeals for the Seventh Circuit.

IT IS SO ORDERED.

DATED: October 29, 2012

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE