

IN THE UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

DONNELLY J. LE BLANC,	:	
	:	
Plaintiff	:	
	:	
v.	:	CIVIL NO. 4:CV-14-426
	:	
TAB BICKELL, ET AL.,	:	(Judge Brann)
	:	
Defendants	:	

ORDER

December 3, 2014

Background

This pro se civil rights action pursuant to 42 U.S.C. § 1983 was filed by Donnelly J. Le Blanc, an inmate presently confined at the State Correctional Institution, Camp Hill, Pennsylvania (SCI-Camp Hill). Named as Defendants are various officials at Plaintiff’s prior place of confinement, the State Correctional Institution, Huntingdon, Pennsylvania (SCI-Huntingdon).

Plaintiff describes himself as being a Native American and alleges that he was harassed by SCI-Huntingdon staff regarding his hair length. Plaintiff further claims that although he had a pending request for a religious exemption, prison officials forced him to get a hair cut during October 2012 in violation of his right

to freely exercise his religious beliefs. The Complaint also includes claims of harassment specifically that: a confidential psychiatric evaluation which was sent to him was opened and read outside of his presence; he was denied permission to speak with his attorney via telephone due to an institutional policy; his legal mail was improperly opened; denial of an institutional grievance form; failure to renew pain medication during June, 2013 (more than six months prior to the filing of this action) by Physician's Assistant McConnell; and improper denial of an in person visit with his attorney.

This Court previously granted Plaintiff's motion requesting to proceed in forma pauperis and directed service of the Complaint. Presently pending is motion (doc. 21) filed by the Corrections Defendants to revoke Plaintiff's in forma pauperis status. According to the motion, Plaintiff has "a history of filing frivolous and meritless complaints." Doc. 22, p. 4. Consequently, the Corrections Defendants conclude that since at least three of Le Blanc's civil actions were dismissed as frivolous or for failure to state a claim, he is precluded from proceeding in forma pauperis under 28 U.S.C. § 1915(g).

Remaining Defendant Mark McConnell has filed a motion asking to be joined in the request to revoke Plaintiff's in forma pauperis status. See Doc. 30. McConnell's motion to join will be granted in the interests of judicial economy.

Discussion

Under 28 U.S.C. § 1915(g), a federal civil action by a prisoner proceeding in forma pauperis is barred if he or she:

has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

Section 1915(g) enumerate three specific types of dismissal which can be properly counted as strikes. Strikes under § 1915 (g) are generally limited to dismissals based upon determinations of frivolity, maliciousness, and failure to state a claim. See Ball v. Famiglio, 726 F.3d 448, 463 (3d Cir. 2013) .

The brief supporting the pending motion references three actions as evidence that Le Blanc has accumulated three strikes. The motion to revoke adds that the imminent danger of serious injury exception does not apply with respect to Plaintiff's action. Accordingly, the Defendants request that Plaintiff's in forma pauperis status should be revoked pursuant to the three strikes provision of § 1915(g) and that Le Blanc should be directed to immediately pay the required filing fee or suffer dismissal of his complaint.

The first action cited by the motion to revoke, Le Blanc v. Snavely, et al.,

No. 11-5672 (E.D. Pa.)(Savage, J.) was filed in the United States District Court for the Eastern District of Pennsylvania. By Order dated September 16, 2011, that matter was dismissed as frivolous by the Eastern District as being barred by the applicable statute of limitations. See Doc. 23, Attachment # 1, p. 4.

Accordingly, this Court agrees that it constitutes a strike for purposes of § 1915(g).¹

The second proposed strike, Le Blanc v. County of Lancaster, et al., No. 09-1685 is another case from the Eastern District of Pennsylvania. In a Memorandum Opinion dated October 21, 2009, the Eastern District concluded that “[n]one of LeBlanc’s claims can withstand a Rule 12(b)(6) challenge.” Doc. 23, p. 34. Based upon that finding, this Court is equally satisfied that this action constitutes a second strike for purposes of § 1915(g).

Finally, in Le Blanc v. Beard, Civil No, 1:Cv-10-1444 (M.D. Pa.)(Caldwell, J.) the Honorable William W. Caldwell of this Court dismissed the claims against several Defendants as being frivolous and thereafter granted the remaining defendant’s motion to dismiss for failure to state a claim under Federal

¹ A submitted copy of the docket also indicates that an appeal of that decision was dismissed by the United States Court of Appeals for the Third Circuit. See id. at p. 6.

Rule of Civil Procedure 12(b)(6). See id., Attachment # 2. This Court is satisfied that this decision qualifies as being a third strike.

It is also noted that based upon a review of the respective dockets, there is no indication that the merits of any of the cases composing the three strikes are currently under consideration on appeal. See Lopez v. U.S. Dept. of Justice, 228 Fed. Appx. 218 (3d Cir. 2007) (“[a] dismissal does not qualify as a strike ... unless and until a litigant has exhausted or waived his or her appellate rights.”)

Pursuant to the above discussion, it has been adequately established that Le Blanc accumulated three strikes at the time this matter was filed. Moreover, based upon a review of the Complaint this Court also agrees that the imminent danger of serious injury exception does not apply with respect to Plaintiff’s pending action. It is especially noted that alleged unconstitutional acts occurred months before the filing of this action and there is no claim by Plaintiff that he was in imminent danger of serious harm at the time this matter was initiated.

Accordingly, the motion to revoke Plaintiff’s in forma pauperis status will be granted. Within twenty-one (21) days of the date of this Order, Plaintiff shall pay the required filing fee in full. Failure to timely do so will result in dismissal of this action for failure to prosecute.

In light of the Court’s disposition herein, the respective motions to

dismiss (docs. 19 & 27) filed by the Corrections Defendants and McConnell will be dismissed without prejudice. Furthermore, Plaintiff's motion (doc. 12) seeking leave to file an amended complaint and his motion to stay proceedings (doc. 39) will be dismissed without prejudice. Upon submission of the required filing fee, those motions may be resubmitted.

NOW, IT IS HEREBY ORDERED THAT:

1. Corrections Defendants' motion (Doc. 21) to revoke Plaintiff's in forma pauperis status is **GRANTED**.
2. Defendant McConnell's motion (Doc. 30) to join in the motion to revoke is **GRANTED**.
3. The April 2, 2014 Order of this Court is **VACATED**. Plaintiff's motion to proceed in forma pauperis is construed as a motion to proceed without full prepayment of fees and costs and the motion is **DENIED**.
4. The Administrative Order previously issued by this Court on March 7, 2014 is **VACATED**.
5. Within twenty-one (21) days of the date of this Order, Plaintiff shall pay the required filing fee in full. Failure to

timely do so will result in dismissal of this action for failure to prosecute.

6. The respective motions to dismiss (docs. 19 & 27) filed by the Corrections Defendants and McConnell will be

DISMISSED WITHOUT PREJUDICE.

7. Plaintiff's motion (doc. 12) seeking leave to file an amended complaint and his motion to stay proceedings (doc. 39) are

DISMISSED WITHOUT PREJUDICE.

BY THE COURT:

s/ Matthew W. Brann
Matthew W. Brann
United States District Judge