UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

KENNETH LEE ROYAL, Plaintiff	:	
v.	:	CIVIL NO.3:CV-03-880
	:	(Judge Conaboy)
STANLEY BOHINSKI, ET AL., Defendants	:	

ORDER

Kenneth Lee Royal, an inmate presently confined at the State Correctional Institution, Dallas, Pennsylvania (SCI-Dallas), initiated this pro se civil rights action pursuant to 42 U.S.C. § 1983. By Order dated June 3, 2003, Plaintiff's in forma pauperis application was construed as a motion to proceed without full prepayment of fees and costs and granted. The Order further directed service of the original complaint on the Defendants named therein.

Named as Defendants are the following members of the SCI-Dallas medical staff: Doctor Stanley Bohinski, Doctor Moyer, and Health Care Administrator Patricia Ginocchetti.[1] Plaintiff states that when he was extradited to Pennsylvania on September 26, 2001 he was suffering from a "groin hernia condition." Doc.

[1] By Order dated July 30, 2003, this Court granted Royal's request to voluntarily dismiss his claims against John Doe members of the Pennsylvania Board of Probation and Parole.

1, p. 8.[2] He arrived at SCI-Dallas on November 15, 2001. His complaint alleges that "he was systematically denied and delayed surgery for his inguinal hernia for over 18 eighteen months while confined at the State Correctional Institution at SCID Dallas." Id. at p. 2. Royal admits that he underwent hernia surgery on May 12, 2003. His complaint seeks injunctive and declaratory relief as well as compensatory and punitive damages.

Presently pending is Defendant Ginocchetti's motion to reassess Plaintiff's in forma pauperis status and to stay proceedings.[3] See Doc. 18. The moving Defendant asserts that Royal "had accumulated three (3) strikes against him within the meaning of 28 U.S.C. § 1915(g) before he brought this action." Doc.18, pgs. 5-6. She adds that the imminent danger of serious injury exception does not apply. Consequently, Ginocchetti requests that Plaintiff's in forma pauperis status should be revoked immediately and his case dismissed. Alternatively, the moving Defendant request that Royal should be directed to immediately pay the required filing fee or suffer dismissal of his complaint.

The Plaintiff counters that he has never been informed by any state or federal court the he was under the three strikes

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[2] He acknowledges receiving treatment for his hernia during his prior confinement in the State of Arkansas.

[3] Other motions pending before the Court include Plaintiff's motion requesting leave to amend his complaint (Doc. 17) and Defendant Ginocchetti's motion to dismiss (Doc. 14).

provision. See Doc. 23, p. 2. Royal adds that the documents employed by the moving Defendant to establish three strikes are not authentic original records and this Court should not allow Defendant Ginocchetti to satisfy her § 1915(g) burden through the use of hearsay evidence. See id. at pgs 8-11.

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.

The moving Defendant has submitted competent evidence[4] establishing that Royal, while incarcerated, previously initiated the following civil actions which were dismissed under 28 U.S.C. § 1915(e)(2)(B) as either being frivolous or for failure to state a claim upon which relief could have been granted: Royal v. Partain, Civil No. #:98-CV-4023 (W.D. Ark. April 28, 1998)(complaint sua sponte dismissed as frivolous and for failure to state a claim); Royal v. McElvy, et al., Civil No. #:98-CV-4077 (W.D. Ark. Oct. 30, 1998)(sua sponte dismissal on grounds that complaint is frivolous and fails to state a claim upon which relief may be granted); Royal v. Dawson, Civil

[4] Defendant Ginocchetti has submitted copies of computer generated docket sheets from various federal lawsuits previously initiated by the Plaintiff. The docket sheets clearly establish the grounds for the dismissal of those actions.

No. #:00-CV-229 (E.D. Ark. Jan. 23, 2001)(complaint sua sponte dismissed as frivolous); and Royal v. Norris et al., Civil No. #:01-CV-62 (E.D. Ark. April 19, 2001)(complaint sua sponte dismissed for failure to state a claim).

The gist of Plaintiff's complaint is that needed medical treatment for his hernia was unnecessarily delayed. Since Royal acknowledges that he underwent hernia surgery on May 12, 2003, the alleged unconstitutional conduct did not place this inmate in danger of imminent "serious physical injury" at the time his complaint was filed on May 19, 2003. See Abdul-Akbar v. McKelvie, 239 F.3d 307, 312 (3d Cir. 2001), cert. denied, 533 U.S. 953 (2001). Pursuant to the standards announced in §1915(g), the Court will grant Defendant Ginocchetti's motion requesting reassessment of Plaintiff's in forma pauperis status. This Court's Order of June 3, 2003 which granted Royal leave to proceed in forma pauperis is hereby vacated. Furthermore, the evidence provided by Defendant Ginocchetti shows that Royal's present civil rights action is barred under § 1915(g). An appropriate Order, therefore will enter.

AND NOW, THEREFORE, THIS 1st DAY OF MARCH, 2004, IT IS HEREBY ORDERED THAT:

1. Defendant Ginocchetti's motion to reassess (Doc. 18) Plaintiff's in forma pauperis status is granted. The Court's June 3, 2003 order granting leave to proceed

in forma pauperis is vacated.

2. Plaintiff's complaint is dismissed, without prejudice, pursuant to 28 U.S.C. § 1915(g).

3. The Clerk of Court is directed to close this case.

4. Any appeal from this order will be deemed not taken in good faith. See 28 U.S.C. § 1915(a).

5. All other pending motions in this action are denied as moot.

RICHARD P. CONABOY
United States District Judge