

General Docket
Third Circuit Court of Appeals

Court of Appeals Docket #: 03-1190

Docketed: 01/23/2003

Nature of Suit: 3555 Prison Condition

Termed: 11/19/2003

Lucas v. Tennis, et al

Appeal From: U.S. District Court for the District of Middle Pennsylvania

Fee Status: PLRA

Case Type Information:

- 1) civil
- 2) private
- 3) Civil Rights-prisoner

Originating Court Information:

District: 0314-3 : [98-cv-00393](#)

Court Reporter: Lori Ann Fausnaught

District Judge: John E Jones, III, U.S. District Judge

Date Filed: 03/09/1998

Date Order/Judgment:

01/16/2003

Date NOA Filed:

01/21/2003

Prior Cases:

None

Current Cases:

None

DARIAN A. LUCAS (#CS-2266)
Plaintiff - Appellant

Darian A. Lucas
[NTC Pro Se]
Dallas SCI
1000 Follies Road
Dallas, PA 18612-0000

v.

FRANKLIN TENNIS, Major
Defendant - Appellee

Patrick S. Cawley, Esq.
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[COR NTC State Government]
Office of Attorney General of Pennsylvania
Strawberry Square
Harrisburg, PA 17120-0000

WORKINGER, Sgt.
Defendant - Appellee

Patrick S. Cawley, Esq.
Direct: 717-783-3146
[COR NTC State Government]
(see above)

PYLES, Capt.
Defendant - Appellee

Patrick S. Cawley, Esq.
Direct: 717-783-3146
[COR NTC State Government]
(see above)

REED
Defendant - Appellee

Patrick S. Cawley, Esq.
Direct: 717-783-3146
[COR NTC State Government]
(see above)

<p>EWING, Sergeant Defendant - Appellee</p>	<p>Patrick S. Cawley, Esq. Direct: 717-783-3146 [COR NTC State Government] (see above)</p>
<p>CHURNER, C.O. Defendant - Appellee</p>	<p>Patrick S. Cawley, Esq. Direct: 717-783-3146 [COR NTC State Government] (see above)</p>
<p>KUHNS, Correction Officer Defendant - Appellee</p>	<p>Patrick S. Cawley, Esq. Direct: 717-783-3146 [COR NTC State Government] (see above)</p>
<p>BRUMBAUGH, C.O. Defendant - Appellee</p>	<p>Patrick S. Cawley, Esq. Direct: 717-783-3146 [COR NTC State Government] (see above)</p>
<p>MORRIS Defendant - Appellee</p>	<p>Patrick S. Cawley, Esq. Direct: 717-783-3146 [COR NTC State Government] (see above)</p>
<p>JAMES MORGAN, Warden Defendant - Appellee</p>	<p>Patrick S. Cawley, Esq. Direct: 717-783-3146 [COR NTC State Government] (see above)</p>
<p>WILLIAM R. HARRISON, Corrections Program Director Defendant - Appellee</p>	<p>Patrick S. Cawley, Esq. Direct: 717-783-3146 [COR NTC State Government] (see above)</p>
<p>EDMISTON Defendant - Appellee</p>	<p>Patrick S. Cawley, Esq. Direct: 717-783-3146 [COR NTC State Government] (see above)</p>

DARIAN A. LUCAS,

Appellant

v.

TENNIS, Major; WORKINGER, Sgt.; PYLES, Capt.; REED, Sgt.;
EWING, Sgt.; CHURNER, C.O.; KUHNS, C.O.; BRUMBAUGH, C.O.;
MORRIS, C.O.; JAMES M. MORGAN, Warden; WILLIAM R. HARRISON,
Corrections Program Director; OFFICER EDMISTON

01/23/2003	CIVIL CASE DOCKETED. Notice filed by Darian A. Lucas. (LWC)
01/23/2003	RECORD available on Middle District PA RACER. (LWC)
01/30/2003	APPEARANCE from Attorney Patrick S. Cawley on behalf of Appellees Tennis, Workinger, Pyles, Reed, Ewing, Churner, Kuhns, Brumbaugh, Morris, C.O., James Morgan, William R. Harrison and Edmiston, filed. (LWC)

02/03/2003 Affidavit accompanying Motion for Permission to Appeal In Forma Pauperis by Appellant, filed. (LWC)

02/03/2003 IN FORMA PAUPERIS PRISONER ADDENDUM, filed. (LWC)

02/03/2003 IN FORMA PAUPERIS PRISONER AUTHORIZATION, filed. (LWC)

02/10/2003 MOTION by Appellant to have the appeal heard on the full record below, filed. Answer due 2/25/03. Certificate of Service dated 2/7/03. (LWC)

02/26/2003 MOTION by Appellant for Transcripts Pursuant to 28 U.S.C. Section 753(f) at Government's Expense, filed. Answer due 3/10/03. Certificate of Service dated 2/23/03. (LWC)

03/11/2003 ORDER (Clerk) Action on the motions for leave to proceed in forma pauperis, for leave to proceed on the original record and for transcripts at government expense are deferred for twenty-one (21) days from the date of this order in order to allow appellant an opportunity to file a certified copy of his prison account statement for the six months prior to the filing of the notice of appeal. If timely filing does not occur, the appeal will be dismissed without further notice pursuant to Third Circuit Local Appellate Rules 3.3 and Misc. 107.1. In addition, a motion for leave to proceed on the original record cannot be considered until appellant has been granted leave to proceed on appeal in forma pauperis, filed. (LWC)

04/16/2003 PRISONER ACCOUNT STATEMENT, filed. (LWC)

05/15/2003 ORDER (Clerk) granting motion for leave to proceed in forma pauperis. The warden, or his or her designee, shall calculate, collect, and forward the initial payment assessed in this order to the United States District Court for the Middle District of Pennsylvania. This appeal will be submitted to a panel of the Court for determination under 28 U.S.C. Section 1915(e)(2). The Court also will consider any other appropriate action, such as summary affirmance of the order of the District Court. See Third Circuit Internal Operating Procedures Chapter 10.6. The foregoing motion for Transcripts at Government Expense is referred to the motions panel which will make the determination under 28 U.S.C. Section 1915(e)(2). The foregoing motion for leave to Proceed on the Original Record is granted provided appellant attaches to his brief copies of the order or judgment appealed, any memorandum or opinion entered by the district court in regard to that order or judgment and the notice of appeal, filed. EPS-241 (LWC)

05/15/2003 Certified copy of order to Lower Court. (LWC)

05/15/2003 Certified copy of order to Warden. (LWC)

06/19/2003 ORDER (Clerk), The appeal from a decision entered in a civil action has been filed by a prisoner who has had three prior civil actions or appeals dismissed for failure to state a claim on which relief may be granted or as frivolous. See Lucas v. Simpson, W.D. No. 00-cv-1305; Lucas v. Simpson, 3rd Cir. No. 00-3739 and Lucas v. Fetner, 3rd Cir. No. 02-2719. Therefore, pursuant to 28 U.S.C. Section 1915(g) leave to proceed in forma pauperis could not have been granted unless appellant demonstrates that the appeal concerns a matter currently placing him in imminent danger of serious physical injury. Insofar as no showing that the appeal concerns a matter currently placing the appellant in imminent danger of serious physical injury was made at the time the May 15, 2003 order granting leave to proceed in forma pauperis was entered, that order is hereby vacated. The appellant will be allowed fourteen (14) days from the date of this order to either pay the \$105.00 in filing and docketing fees to the clerk of the district court or, if applicable, to file a motion in this Court demonstrating that the appeal concerns a matter placing appellant in current danger or imminent serious physical injury. If the filing and docketing fees are not paid or a motion demonstrating imminent danger of serious physical injury filed, the appeal will be dismissed without further notice pursuant to Third Circuit Local Appellate Rules 3.3 and Misc. 107.1. Should a motion demonstrating imminent danger of serious physical injury be filed and in forma pauperis status granted by the Court, a determination pursuant to 28 1915(e)(2) will be made. The Court may also consider whether other action such as summary affirmance pursuant to Rule 27.4, Third Circuit Local Appellate Rules, is appropriate, filed. (LWC)

06/19/2003 Certified copy of order to Lower Court. (LWC)

06/19/2003 Certified copy of order to Warden. (LWC)

06/30/2003 MOTION by Appellant Darian A. Lucas Demonstrating Imminent Danger, filed. Answer due 07/08/03. Certificate of Service dated 6/24/03. (LWC)

07/10/2003 RESPONSE by Appellees in Opposition to Appellants motion concerning Imminent Danger of Serious Physical Injury, received. Certificate of service dated 7/8/03. (LWC)

07/11/2003 MOTION by Appellant for appointment of counsel pursuant to Section 1915, filed. Answer due 07/21/03.

Certificate of Service dated 7/7/03. (LWC)

- 10/23/2003 ORDER (Sloviter, McKee and Smith, Authoring Judge, Circuit Judges) denying motion to proceed in forma pauperis by Appellant pursuant 28 U.S.C. Section 1915(g). Appellant, a Pennsylvania inmate, has had at least three prior civil actions dismissed as frivolous or for failure to state a claim: Lucas v. W.D. No. 00-cv-1305 (dismissed for failure to state a claim); Lucas v. Simpson, 3rd Cir. No. 00-3739 (dismissed frivolous; and Lucas vs. Fetzner, 3rd Cir. No. 02-2719 (dismissed as frivolous). Appellant has failed to show that he was "under imminent danger of serious physical injury" at the time he filed this appeal. See 28 U.S.C. Section 1915(g); Abdul-Akbar v. McKelvie, 239 F. 3d 307, 313 (3d Cir. 2001) (en banc). Accordingly, appellant shall pay to the District Court the entire appellate filing and docketing fee of \$105.00 within 14 days of the date of this order. Failure to pay the fees will result in the dismissal of this appeal. See 3d Cir. LAR 107.1(a). Should appellant pay the appellate filing fees, the appeal will be submitted to a panel of the Court for possible summary action, pursuant to LAR 27.4 and I.O.P. 10.6. Appellant's motion for transcripts at government expense, and motion for appointment of counsel would be submitted to the same panel, filed. APS-321 (LWC)
- 10/23/2003 Certified copy of order to Lower Court. (LWC)
- 11/19/2003 CLERK ORDER (LAR 3.3 and LAR Misc 107.1(a)): Procedurally Terminated Without Judicial Action; Default. (LWC)
- 11/19/2003 Certified copy of order to Lower Court. (LWC)
- 12/01/2003 Petition for Rehearing by Appellant of Court's 11/19/03 order. (LWC)
- 12/02/2003 ORDER (Clerk), No action will be taken in regard to the foregoing submission until such time that the \$105.00 in filing and docketing fees are paid in accordance with this Court's October 23, 2003 order. The time for filing for rehearing of that October 23, 2003 order had expired by November 24, 2003 when the petition was filed. The appellant's submission is patently incorrect in regard to the disposition of the appeal docketed at 3rd Cir. No. 03-2719. That appeal was dismissed as frivolous pursuant to 28 U.S.C. Section 1915(e)(2). Although the appellant has continued to make submissions attempting to collaterally attack that decision, the appeal has been finally decided and the Court's mandate issued. The Court has denied at least one request to recall the mandate. Should appellant pay the filing and docketing fees, a motion to reopen this appeal may be filed. The granting of such a motion would be entirely discretionary. The issues already decided by this Court in 3rd Cir. No. 03-2719 will not, in any event, be relitigated in this appeal, filed. (LWC)
- 01/05/2004 Letter by Appellant dated January 1, 2004 concerning his motion demonstrating imminent danger. (LWC)
- 01/07/2004 ORDER (Clerk), construing letter by Appellant dated January 1, 2004 as a motion for clarification. That motion is denied. Pursuant to the Court's October 23,2003 order appellant was required to pay the \$105.00 in filing and docketing fees if he wished to prosecute the above-entitled appeal. There was no other option provided for in that order. Therefore, the filing of any imminent danger motion or any other type of motion in another civil action or appeal is completely irrelevant to the above-entitled appeal. If the appellant wishes to pursue this appeal, he must both pay the \$105.00 in fees and file a formal motion to reopen the appeal. The Court will not revisit or reconsider the October 23, 2003 order which is final and controlling as to the requirement that the fees be paid. Therefore, no action will be taken in regard to any further submissions or correspondence submitted in the above-entitled appeal unless the district court notifies this Court that the \$105.00 in fees has been paid, filed. (LWC)
- 08/31/2007 MOTION by Appellant to Reopen Appeal, filed. Answer due 09/07/07. Certificate of Service dated 8/22/07. (LWC)
- 10/12/2007 Letter by Appellant dated 10/03/07 in support of Motion to Reopen. (LWC)
- 12/06/2007 ORDER (Ambro, Authoring Judge, Fuentes and Jordan, Circuit Judges) denying motion to reopen appeal by Appellant Darian A. Lucas, filed. CCO-14 (CLC)
- 12/24/2007 ORDER (Clerk) the October 23, 2003 submission was denied. Since the Court has declined to reopen the appeal, the appeal is concluded. Any requests for reconsideration or review of decisions entered after October 23, 2003 were rendered moot by the Court's order dated December 6, 2007. Therefore, no action will be taken in regard to the submission dated December 6, 2007 since the matter was moot by the time that submission was received insofar as the Court had, again, determined that payment of the filing and docketing fees would have been required for the appeal to proceed. Likewise, no action will be taken in regard to any request for reconsideration of the December 6, 2007 order. Since the appeal had been previously decided, the December 6, 2007 order was not case dispositive and appellant does not have the right to seek review of that decision by the Court en banc. Third Circuit Internal Operating Procedures Chapter 10.3.3, filed. (CLC)

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