UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
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ORDER

April 11, 2018

Before

FRANK H. EASTERBROOK, *Circuit Judge*

DANIEL A. MANION, *Circuit Judge*

No. 17-3388	MARLON L. WATFORD, Plaintiff - Appellant v. NATASHA DOE, et al., Defendants - Appellees
Originating Case Information:	
District Court No: 1:15-cv-09540 Northern District of Illinois, Eastern Division District Judge Virginia M. Kendall	

The following is before the court:

1. **MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS**, filed on January 12, 2018, by the pro se appellant.

2. **TRUST FUND**, filed on January 12, 2018, by the pro se appellant.

3. **MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS**, filed on March 27, 2018, by the pro se appellant.

4. **MEMORANDUM IN SUPPORT OF PLRA MOTION FOR LEAVE TO PROCEED ON APPEAL IN FORMA PAUPERIS**, filed on March 27, 2018, by the pro se appellant.

Upon consideration of the request for leave to proceed as a pauper on appeal, the

- over -

Appendix
A

appellant's motion filed under Federal Rule of Appellate Procedure 24, the district court's order pursuant to 28 U.S.C. § 1915(a)(3) certifying that the appeal was not filed in good faith, and the record on appeal,

IT IS ORDERED that the motion for leave to proceed on appeal in forma pauperis is **DENIED**. Appellant shall pay the required docketing fee within 14 days, or else this appeal will be dismissed for failure to prosecute pursuant to Circuit Rule 3(b). *See Newlin v. Helman*, 123 F.3d 429, 434 (7th Cir. 1997).

IT IS FURTHER ORDERED that the motion for recruitment of counsel, is **DENIED**. *See Pruitt v. Mote*, 503 F.3d 647 (7th Cir. 2007) (en banc); *Farmer v. Haas*, 990 F.2d 319, 321 (7th Cir. 1993). It is not necessary to recruit counsel to assist in resolving the issues raised on appeal.

Appendix
A

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PLRA C.R. 3(b) FINAL ORDER

May 8, 2018

No. 17-3388	MARLON L. WATFORD, Plaintiff - Appellant v. NATASHA DOE, et al., Defendants - Appellees

Originating Case Information:

District Court No: 1:15-cv-09540
Northern District of Illinois, Eastern Division
District Judge Virginia M. Kendall

The pro se appellant was DENIED leave to proceed on appeal in forma pauperis by the appellate court on April 11, 2018 and was given fourteen (14)days to pay the $505.00 filing fee. The pro se appellant has not paid the $505.00 appellate fee. Accordingly,

IT IS ORDERED that this appeal is **DISMISSED**for failure to pay the required docketing fee pursuant to Circuit Rule 3(b).

IT IS FURTHER ORDERED that the appellant pay the appellate fee of $505.00 to the clerk of the district court. The clerk of the district court shall collect the appellate fees from the prisoner's trust fund account using the mechanism of *Section 1915(b). Newlin v. Helman, 123 F.3d 429, 433* (7th Cir. 1997).

form name: **c7_PLRA_3bFinalOrder**(form ID: **142**)

Appendix
B

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

Marlon Watford

Plaintiff(s),

v.

Natasha Doe, et al,

Defendant(s).

Case No. 15 C 9540
Judge Virginia M. Kendall

JUDGMENT IN A CIVIL CASE

Judgment is hereby entered (check appropriate box):

☐ in favor of plaintiff(s)
and against defendant(s)
in the amount of $,

which ☐ includes pre–judgment interest.
☐ does not include pre–judgment interest.

Post-judgment interest accrues on that amount at the rate provided by law from the date of this judgment.

Plaintiff(s) shall recover costs from defendant(s).

☐ in favor of defendant(s)
and against plaintiff(s)

Defendant(s) shall recover costs from plaintiff(s).

☒ other: Plaintiff's Complaint is dismissed with prejudice.

This action was *(check one)*:

☐ tried by a jury with Judge presiding, and the jury has rendered a verdict.
☐ tried by Judge without a jury and the above decision was reached.
☒ decided by Judge Virginia M. Kendall for Plaintiff's failure to state a claim

Date: 10/11/2017

Thomas G. Bruton, Clerk of Court

Lynn Kandziora , Deputy Clerk

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

Marlon L. Watford (R-15678),	)	
	)	
Plaintiff,	)	
	)	Case No. 15 C 9540
v.	)	
	)	Judge Virginia M. Kendall
	)	
Natasha Doe, et al.,	)	
	)	
Defendants.	)	

ORDER

Plaintiff's April 13, 2016 *pro se* amended complaint (Dkt. 17) and this case are dismissed with prejudice for failure to state a claim. Dismissal is also warranted based on Plaintiff's failure to fully disclose his full litigation history. A strike is assessed pursuant to 28 U.S.C. § 1915(g). Final judgment shall enter. Civil case terminated. All future dates are stricken.

STATEMENT

Plaintiff Marlon L. Watford, currently a prisoner at Menard Correctional Center, brought this *pro se* civil rights lawsuit pursuant to 42 U.S.C. § 1983, alleging that, as a Muslim who practices the religion of Al-Islam, he has a spiritual duty to be free from all forms of oppression, including financial and social oppression. Plaintiff alleged that Defendants, employees of the Illinois Department of Corrections (Stateville Correctional Center), financially and socially oppressed him by refusing to allow him to utilize Stateville's free legal postage and by refusing to cover $1.82 postage fee for his legal mail while he was a "temporary court writ inmate." Plaintiff alleged that as a result of this "oppression," his case *Watford v. Quinn*, 14 C 0571 (S.D. Ill.), was dismissed for failure to prosecute. Plaintiff alleged that he also suffered "stomach irritation, irritable bowel syndrome, re-aggravated his H. Pylori scar tissue, mental and emotional distress from being unable to fulfill his obligations over his sinful and irreligious conduct." Plaintiff sought $2.5 million in damages and $7 million in punitive damages. Plaintiff further sought an injunction order directing the Warden to permit temporary court writ prisoners to use the legal postage consignment fee policy who do have not funds in their Stateville account but have funds in their parent institution account. (Dkt. 1)

On January 19, 2016, the Court dismissed Plaintiff's complaint without prejudice due to the fact that he had not provided the Court with his full litigation history, that the complaint and attachments comprised over 200 pages and therefore were not concise and clear statements seeking relief as required by Fed. R. Civ. P. 8, and because the Court could not determine whether the Plaintiff might be relitigating a matter that was already litigated in the Southern District Court. (Dkt. 4) As a result of the Court's January 19, 2016 order, Plaintiff filed his First Amended Complaint (Dkt. 17) and paired down the number of pages and attachments to 189

pages. At this point, Judge Zagel, to whom this case was initially assigned, recruited an attorney to meet with the Plaintiff and determine whether an amended complaint could be filed. (Dkt. 18) That attorney (Howard Stein) researched the issues, reviewed the litigation history and all of the cases filed by the Plaintiff and advised the Plaintiff as to the ability to proceed on his case. He then sought to withdraw based on conflict because he and Plaintiff did not agree on the merits of the case. (Dkt. 28) Plaintiff also sought for the first recruited attorney (Mr. Stein) to withdraw because he said that attorney failed to recognize and connect each element of that claim in order to discern its merits. (Dkt. 29, pg. 2) Judge Zagel granted recruited counsel's motion to withdraw and gave Plaintiff a second attorney to review the matter. (Dkts. 31, 32) That second attorney (Brion W. Doherty) also sought to withdraw based on conflict. (Dkt. 41) Plaintiff disagreed with his advice and instead sought to continue the matter "of first impression." As a result, in spite of his second recruited lawyer's advice, Plaintiff alleges that his recruited counsel "failed to peel back and analyze the transparent layers of the onion of the Plaintiff's due process of law rights being violated." He therefore sought another attorney who did not have a "conflict of interest" and he sought new counsel "because Plaintiff has not forfeited his entitlement to recruited counsel." (Dkt. 43)

The Court therefore has provided Plaintiff with two recruited attorneys who have sought to withdraw because Plaintiff does not agree with their analysis of the merits of the case. Under Local Rule 83.38(a)(5), recruited counsel is permitted to withdraw if, in counsel's opinion, the party's claims or defenses are not warranted under existing law and cannot be supported by good faith argument for extension, modification, or reversal of existing law. Although both attorneys filed motions to withdraw that do not articulate the exact conflict, Plaintiff's own filings do. In both motions seeking conflict free counsel, Plaintiff sets forth how each attorney did not believe his case could move forward and both times Plaintiff disagreed and wants them to argue a case of first impression – something that neither believed could be done based on their legal training and ethical obligations. Additionally, and contrary to Plaintiff's contentions, he has no right to court-appointed counsel in this civil action. *See Olson v. Morgan*, 750 F.3d 708, 711 (7th Cir. 2014), ("[t]here is no right to court-appointed counsel in federal civil litigation").

The Court therefore allowed both attorneys to withdraw and found that Plaintiff shall proceed *pro se* in this matter. As such, the Court has reviewed Plaintiff's *pro se* First Amended Complaint (Dkt. 17) to see if it states a claim upon which relief can be granted and determines that is does not for the following reasons.

First, it is clear – based on a closer examination of the First Amended Complaint and a review of Plaintiff's federal litigation history – that Plaintiff's purported claim of "religious discrimination" is nothing more than a veiled attempt to get his first case reopened – the case filed in the Southern District of Illinois. That case was dismissed, in part, for Plaintiff's failure to prosecute and he alleges that he could not prosecute the case because Stateville failed to allow him to use free postage. But the attachments to the complaint belie that theory. Plaintiff was notified that all he need do was attach a voucher that would go to his parent institution and he would be able to have the filing mailed. (Dkt. 17, pg. 73) He did not do so, and he is using his failure to do so as a basis to create a discrimination claim. Further the discrimination that he

suffered, if any, does not pertain to his religion but rather to his status as a temporary inmate housed on a writ. Regardless, he was notified about how he could file and he did not follow the voucher process.

Second, and relatedly, Plaintiff chose to appeal the case in the Southern District of Illinois rather than file an amended complaint. His original complaint was dismissed without prejudice and he had the opportunity to file an amended complaint. When he missed the Court-imposed deadline for submitting an amended complaint, the proper path was to give the District Court Judge an opportunity to allow him to reopen the matter by informing the District Court about any delay in sending out mail from Stateville. Instead, he appealed, divesting the District Court of jurisdiction.

Third, and further, when Plaintiff appealed the dismissal of the case from the Southern District, he had an opportunity to explain the reason for not meeting the lower court deadline, but, instead, he did not pay the filing fee and that appeal was dismissed. *See* Dkt. 3, *Watford v. Quinn,* no. 14-3227. Now, in an effort to circumvent that dismissal, Plaintiff has created what he believes to be (or at least what he has characterized) as a religious discrimination claim.

Fourth, Plaintiff is an experienced litigator, and, due to his litigation history, Plaintiff is aware of the need to make payments from his account for his court filings (and indeed has done so repeatedly for years) and those payments did not constitute any alleged "religious oppression." Plaintiff had the ability to do the same for the matter which was dismissed in the Southern District and the same payment would have come out of his parent institution account (at Menard) once that voucher was sent to the parent institution. Therefore, any financial burden was not imposed by the Stateville Defendants (named in this case), but by Plaintiff's choice in failing to complete the voucher.

Finally, having reviewed the litigation history that was not disclosed by Plaintiff (*see* Dkt. 4, pg. 2), the Court finds that his failure to reveal his full and complete history was intentional and not for lack of knowledge. As noted in the Court's initial review order from January 19, 2016, Plaintiff failed to use the Court's standard complaint form and his rambling pleadings made reference to only three of his four previously-filed lawsuits. (*Id.* at pg. 3) In his amended pleading, Plaintiff provided some information about the four previously-filed federal lawsuits, including *Watford v. Quinn*, which he simply indicated had been "dismissed." (Dkt. 17, pg. 4-6) Notably, Plaintiff did not mention the basis of the dismissal (or that it had been assessed a strike), nor did he provide any information related to the appeal of *Watford v. Quinn* (which had been dismissed on 3/13/15 for failure to pay the filing fee). By failing to disclose a full and accurate listing of all of his previously-filed cases, he failed to show the substantial overlap of the claims in this case and his case from the Southern District, as well as the fact that his prior litigation (in the Southern District) had already addressed his failure to file.

Accordingly, the Court dismisses the First Amended Complaint (Dkt. 17) and this case for failure to state a claim. Dismissal is also warranted based on Plaintiff's failure to fully disclose his full litigation history. *See Hoskins v. Dart*, 633 F.3d 541, 543-44 (7th Cir. 2011).

The dismissal of this case counts as a dismissal under 28 U.S.C. § 1915(g). Final judgment will be entered.

If Plaintiff wishes to appeal, he must file a notice of appeal with this Court within thirty days of the entry of judgment. *See* Fed. R. App. P. 4(a)(1). If Plaintiff appeals, he will be liable for the $505.00 appellate filing fee regardless of the appeal's outcome. *See Evans v. Ill. Dep't of Corr.*, 150 F.3d 810, 812 (7th Cir. 1998). If the appeal is found to be non-meritorious, Plaintiff could be assessed another "strike" under 28 U.S.C. § 1915(g). If a prisoner accumulates three "strikes" because three federal cases or appeals have been dismissed as frivolous or malicious, or for failure to state a claim, the prisoner may not file suit in federal court without pre-paying the filing fee unless he is in imminent danger of serious physical injury. *Ibid.* If Plaintiff seeks leave to proceed *in forma pauperis* on appeal, he must file a motion for leave to proceed *in forma pauperis* in this Court. *See* Fed. R. App. P. 24(a)(1).

Plaintiff need not bring a motion to reconsider this Court's ruling to preserve his appellate rights. However, if Plaintiff wishes the Court to reconsider its judgment, he may file a motion under Federal Rule of Civil Procedure 59(e) or 60(b). Any Rule 59(e) motion must be filed within 28 days of the entry of this judgment. *See* Fed. R. Civ. P. 59(e). The time to file a motion pursuant to Rule 59(e) cannot be extended. *See* Fed. R. Civ. P. 6(b)(2). A timely Rule 59(e) motion suspends the deadline for filing an appeal until the Rule 59(e) motion is ruled upon. *See* Fed. R. App. P. 4(a)(4)(A)(iv). Any Rule 60(b) motion must be filed within a reasonable time and, if seeking relief under Rule 60(b)(1), (2), or (3), must be filed no more than one year after entry of the judgment or order. *See* Fed. R. Civ. P. 60(c)(1). The time to file a Rule 60(b) motion cannot be extended. *See* Fed. R. Civ. P. 6(b)(2). A Rule 60(b) motion suspends the deadline for filing an appeal until the Rule 60(b) motion is ruled upon only if the motion is filed within 28 days of the entry of judgment. *See* Fed. R. App. P. 4(a)(4)(A)(vi).

Date: 10/11/2017

/s/Virginia M. Kendall
United States District Judge

Additional material from this filing is available in the Clerk's Office.