

FILED: July 3, 2018

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

(A)

---

No. 18-6037  
(5:17-cv-02703-RMG)

---

SHAHEEN CABBAGESTALK

Plaintiff - Appellant

v.

DIRECTOR BRYAN P STIRLING; CPT CARTER; CPT L YOUNG; CPT REESE;  
CPT LIVINGSTON; CPT MCNUTT; SGT JACKSON; AW PEEPLES; MS  
BROWN, Classifications Manager; MS HYLER, Classifications; MS DEAN;  
WARDEN DENNIS BUSH; MS FORDHAM, Grievance Coordinator; SHERMAN  
ANDERSON, Chief Inmate Grievance Branch; AGENT STEVENS, Police Services;  
ANGELA HARDIN, Admin Coordinator II Deputy Police Services; LT R  
WILLIAMS; SGT JOHN C WILLIAMS; LT C PARKER; BRITTAN PAUL,  
Inspector General's Office; LT WALKER; OFC BROWN; OFC STUART; SGT MS  
STATEN; GLOBAL TEL LINK; HENRY MCMASTER; MAJOR GRUBER

Defendants - Appellees

---

ORDER

---

The court dismisses this proceeding for failure to prosecute pursuant to Local  
Rule 45.

*Because  
Can't pay fees  
Imminent Danger*

For the Court--By Direction

/s/ Patricia S. Connor, Clerk

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
ORANGEBURG DIVISION**

Shaheen Cabbagestalk,	)	Civil Action No. 5:17-2703-RMG
	)	
Plaintiff,	)	
	)	
v.	)	<b>ORDER AND OPINION</b>
	)	
Director Bryan P. Sterling, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	

---

This matter is before the Court on Plaintiff's motion for a temporary restraining order. For the reasons set forth below, the Court denies the motion for a temporary restraining order, dismisses the complaint with prejudice, and notifies Plaintiff that the Court is considering the imposition of a prefiling injunction against Plaintiff.

**I. Background**

Plaintiff is serving an 18-year sentence for armed robbery at the Perry Correctional Institution of the South Carolina Department of Corrections. The complaint is only partially legible and Plaintiff has filed over 200 rambling, barely legible pages in support of the complaint, or to amend the complaint, but the gravamen of Plaintiff claim is that prison guards are harassing him and that the guards are conspiring with inmates to kill him. Plaintiff seeks several hundred thousand dollars in damages. Plaintiff has also moved for a temporary restraining order ordering his transfer to the Maricopa County Jail in Arizona.

**II. Discussion**

Plaintiff is an extreme serial litigant. Plaintiff has filed at least 23 other actions in this Court before the instant action. Plaintiff has filed at least eight actions in the Richland County Court of Common Pleas. Plaintiff has filed four appeals with the South Carolina Court of Appeals

and two petitions with the South Carolina Supreme Court. Plaintiff has filed seven mandamus petitions in the United States Court of Appeals for the Fourth Circuit and a petition for a writ of certiorari in the United States Supreme Court.

Plaintiff's ability to file *in forma pauperis* was revoked years ago under the three-strike provision of 28 U.S.C. § 1915(g) for frivolous filings. *E.g., Cabbagestalk v. Smith*, Civ. No. 5:14-268-RMG (D.S.C. May 2, 2014). That has not prevented Plaintiff from continuing to file frivolous lawsuits. Plaintiff often invokes the "imminent danger of serious physical injury" exception to the three-strike rule. (*See* Dkt. No. 9 at 1–2.) Here, Plaintiff alleges that prison guards and inmates are conspiring to kill him. Plaintiff also filed motions for temporary restraining orders or preliminary injunctions in four other cases before the instant case.

On its face, Plaintiff's complaint and motion for a restraining order do not present a plausible claim that Plaintiff is in imminent danger of serious physical injury. Were that not so, Plaintiff's serial litigation history, including years of alleging that inmates and/or prison staff are attempting to harm him, would render it implausible. Plaintiff's wild allegations that prison staff and inmates are conspiring against him are not "magic words" that permit endless abuse of judicial process. Further, prison disciplinary records show that it is Plaintiff who has been threatening prison staff. State records show that while incarcerated Plaintiff has been disciplined on 42 occasions, including 15 incidents of possession of a weapon or threatening physical harm to prison employees.

In the Court's view, the only available option to control Plaintiff's extreme abuse of judicial process is to impose a prefiling injunction. Before imposing a prefiling injunction, however, the Court must provide a litigant with notice and an opportunity to be heard. *Cromer v. Kraft Foods N. Am., Inc.*, 390 F.3d 812, 819 (4th Cir. 2004). The Court therefore notifies Plaintiff that the

Court is considering the imposition of a prefiling injunction on Plaintiff. Plaintiff may file an explanation as to why a prefiling injunction should not be imposed by January 8, 2018.

**III. Conclusion**

For the foregoing reasons, the Court **DENIES** the motion for a temporary restraining order and all other pending motions in this matter (Dkt. Nos. 20, 21, 22) and **DISMISSES WITH PREJUDICE** the complaint. Plaintiff may file an explanation as to why a prefiling injunction should not be imposed on him by **January 8, 2018**.

**AND IT IS SO ORDERED.**



Richard Mark Gergel  
United States District Court Judge

December 13, 2017  
Charleston, South Carolina

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
ORANGEBURG DIVISION**

Shaheen Cabbagestalk,

Plaintiff,

V.

Director Bryan P. Sterling, *et al.*,

Defendants.

Civil Action No. 5:17-2703-RMG

### ORDER AND OPINION

This matter is before the Court on Plaintiff's motion to reconsider. On December 13, 2017, the Court denied Plaintiff's motion for a temporary restraining order, dismissed the complaint with prejudice, and notified Plaintiff that the Court is considering the imposition of a prefiling injunction against Plaintiff and directed Plaintiff to show cause why an injunction should not be imposed. For the reasons set forth below, the Court denies the motion to reconsider and imposes a prefiling injunction.

## I. Background

Plaintiff is serving an 18-year sentence for armed robbery at the Perry Correctional Institution of the South Carolina Department of Corrections. Plaintiff claims that prison guards are harassing him and conspiring with inmates to kill him. Plaintiff seeks several hundred thousand dollars in damages and an order transferring him to the Maricopa County Jail in Arizona.

## II. Discussion

As the Court noted in its Order of December 13, 2017, Plaintiff is an extreme serial litigant who has filed at least 23 other actions in this Court, 8 actions in the Richland County Court of Common Pleas, and 7 mandamus actions in the Fourth Circuit. Plaintiff's ability to file *in forma pauperis* was revoked years ago under the three-strike provision of 28 U.S.C. § 1915(g) for

frivolous filings. *E.g., Cabbagestalk v. Smith*, Civ. No. 5:14-268-RMG (D.S.C. May 2, 2014). That has not prevented Plaintiff from continuing to file frivolous lawsuits. Plaintiff often invokes the “imminent danger of serious physical injury” exception to the three-strike rule. (*See* Dkt. No. 9 at 1–2.) Here, Plaintiff alleges that prison guards and inmates are conspiring to kill him.

The Court previously held that Plaintiff’s complaint and motion for a restraining order do not present a plausible claim that Plaintiff is in imminent danger of serious physical injury. Plaintiff now moves for reconsideration. Like all of Plaintiff’s filings, Plaintiff’s motion to reconsider is rambling and difficult to decipher. He argues that the South Carolina Department of Corrections “has murdered (over) (5) of my comrad[e]s” and he repeatedly states his claims that various persons are trying to kill him and that judges who rule against his claim are biased. (Dkt. No. 34.) He also claims he never asked for transfer to the Maricopa County Jail in Arizona, but rather only asked to be removed from the custody of the State of South Carolina. That distinction is both immaterial and false—Plaintiff specifically asked for transfer to “a county jail or work release” in Phoenix, Arizona. (Dkt. No. 21-1 at 2.) Finally, Plaintiff attached to his motion to reconsider his copy of the Court’s order of December 13, 2017 with the words “Void” and “Null” handwritten over the text.

Plaintiff was directed to explain why a prefiling injunction should not be imposed. In response, Plaintiff merely states “a prefiling injunction should not be filed against me because I’m only doing what the law allows me to do ask for help from the court (if) my life[’]s in danger which it is.” (Dkt. No. 34.) As the Court previously held, however, wild allegations that prison staff and inmates are conspiring against Plaintiff are not “magic words” that permit endless abuse of judicial process. Plaintiff’s forty frivolous lawsuits over the last eleven years is a clear abuse of process that the Court can no longer tolerate. Plaintiff was informed that in the Court’s view,

the only available option to control his abuse of process is a prefiling injunction. Plaintiff has now been provided notice and a meaningful opportunity to be heard. *Cf. Cromer v. Kraft Foods N. Am., Inc.*, 390 F.3d 812, 819 (4th Cir. 2004). The Court's view remains that the only available option to control Plaintiff's abuse of judicial process is a prefiling injunction.

For the foregoing reasons and for the reasons set forth in the Court's order of December 13, 2017, and to protect the courts and any potential defendants from the harassment of frivolous and vexatious litigation initiated by Plaintiff, the court issues the following injunctions:

1. The court **ENJOINS** Plaintiff from filing any new action or proceeding in any federal court, other than a petition for habeas relief, without first obtaining leave of that court; and
2. The court **ENJOINS** Plaintiff from filing any further papers in any case, either pending or terminated, in the District of South Carolina, without first obtaining leave of court.

These injunctions apply only to *pro se* filings and do not apply to any action filed by counsel on Plaintiff's behalf. Leave of court for *pro se* filings shall be forthcoming upon Plaintiff's demonstrating through a properly filed motion that the proposed filing: (1) can survive a challenge under Rule 12 of the Federal Rules of Civil Procedure; (2) is not barred by principles of issue or claim preclusion; (3) is not repetitive or violative of a court order; and (4) is in compliance with Rule 11 of the Federal Rules of Civil Procedure.

Because of Plaintiff's long history of frivolous filings, the Court finds it likely Plaintiff will attempt to ignore this Order. The court therefore **ORDERS** the Clerk to refuse to accept any submissions for filing except petitions for leave of court, unless such filings are accompanied by an order of this court granting leave. In the event that Plaintiff succeeds in filing papers in violation of this order, upon such notice, the Clerk, under authority of this Order, immediately and summarily shall strike the pleadings or filings. This Order does not apply to the filing of timely

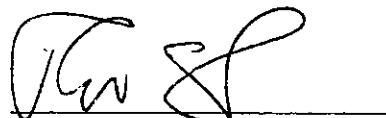
notices of appeal from this Court to the Court of Appeals and papers solely in furtherance of such appeal.

Plaintiff is enjoined only from filing frivolous *pro se* papers in federal court. Plaintiff may file *pro se* if he can show his claims are not frivolous. Actions by counsel on behalf of Plaintiff are unaffected. Plaintiff's ability to seek appellate review is unaffected. Plaintiff's ability to seek habeas relief is unaffected. Plaintiff's access to state courts is unaffected. The Court therefore finds that the above prefiling injunction is narrowly tailored to halt Plaintiff's ongoing abuse of process in federal court.

### **III. Conclusion**

For the foregoing reasons, the Court **DENIES** the motion for reconsideration (Dkt. No. 34) and **ENJOINS** Plaintiff as herein provided.

**AND IT IS SO ORDERED.**

A handwritten signature in black ink, appearing to read 'RM Gengel', is written over a horizontal line.

Richard Mark Gengel  
United States District Court Judge

January <sup>9</sup>\_\_\_\_, 2018  
Charleston, South Carolina



FILED: July 3, 2018

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

No. 18-6037  
(5:17-cv-02703-RMG)

---

SHAHEEN CABBAGESTALK

Plaintiff - Appellant

v.

DIRECTOR BRYAN P STIRLING; CPT CARTER; CPT L YOUNG; CPT REESE; CPT LIVINGSTON; CPT MCNUTT; SGT JACKSON; AW PEEPLES; MS BROWN, Classifications Manager; MS HYLER, Classifications; MS DEAN; WARDEN DENNIS BUSH; MS FORDHAM, Grievance Coordinator; SHERMAN ANDERSON, Chief Inmate Grievance Branch; AGENT STEVENS, Police Services; ANGELA HARDIN, Admin Coordinator II Deputy Police Services; LT R WILLIAMS; SGT JOHN C WILLIAMS; LT C PARKER; BRITTAN PAUL, Inspector General's Office; LT WALKER; OFC BROWN; OFC STUART; SGT MS STATEN; GLOBAL TEL LINK; HENRY MCMASTER; MAJOR GRUBER

Defendants - Appellees

---

RULE 45 MANDATE

---

This court's order dismissing this appeal pursuant to Local Rule 45 takes

effect today.

This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

/s/Patricia S. Connor, Clerk

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