

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-10392-D

GORDON C. REID,

Plaintiff-Appellant,

versus

WARDEN,
FNU TAYLOR,
Captain of the Guards,
JOHN DOE,
Lieutenant of the Guards,
JOHN DOE, 2,
Lieutenant of the Guards,
JOHN DOE, 3,
Lieutenant of the Guards, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

Before: TJOFLAT, MARCUS and NEWSOM, Circuit Judges.

BY THE COURT:

Gordon C. Reid, a federal prisoner, appeals the district court's dismissal of his civil rights complaint without prejudice, which was based on the court's conclusion that Reid's failure to disclose his litigation history on the complaint form constituted an abuse of the judicial process. The district court denied his motion to proceed on appeal *in forma pauperis*, and certified that this appeal is frivolous and not taken in good faith. The district court then assessed the \$505.00

appellate filing fee, pursuant to the Prison Litigation Reform Act of 1995, 28 U.S.C. § 1915. He has now moved this Court for leave to proceed.

Because the district court already has instituted a partial payment plan under 28 U.S.C. § 1915(a) and (b), the only remaining issue is whether the appeal is frivolous. *See* 28 U.S.C. § 1915(e)(2)(B)(i). “[A]n action is frivolous if it is without arguable merit either in law or fact.” *Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002) (quotation omitted).

This Court reviews sanctions imposed by the district court pursuant to Fed. R. Civ. P. 11 or § 1915 for an abuse of discretion. *Attwood v. Singletary*, 105 F.3d 610, 612 (11th Cir. 1997). Under § 1915, “[a] finding that the plaintiff engaged in bad faith litigiousness or manipulative tactics warrants dismissal.” *Id.* at 613. A dismissal without prejudice generally does not constitute an abuse of discretion, because the plaintiff may simply re-file the action. *See Dynes v. Army Air Force Exch. Serv.*, 720 F.2d 1495, 1499 (11th Cir. 1983) (stating that, because the case was dismissed without prejudice for failure to comply with a court order, the dismissing court did not abuse its discretion); *Kotzen v. Levine*, 678 F.2d 140, 140 (11th Cir. 1982) (stating that dismissal without prejudice should be permitted absent a showing of “some plain prejudice other than the mere prospect of a second law suit” (citations omitted)).

Here, because the district court dismissed Reid’s action without prejudice, the dismissal does not constitute an abuse of discretion, as Reid may simply re-file. *See Dynes*, 720 F.2d at 1499; *Kotzen*, 678 at 140. Moreover, Reid’s argument that the district court erred in concluding that he had abused the judicial process—because the lawsuits that he failed to disclose did not relate to his current conditions of confinement, and, therefore, would not have been responsive to the questions on the complaint form—is belied by the record. Reid is currently serving a federal sentence, which he was also serving when at least one of his undisclosed lawsuits was filed.

Reid's other arguments are also without merit. The dismissal was properly deemed a "strike," because the dismissal order clearly indicated that the case was dismissed for abuse of the judicial process, and such a dismissal is deemed a dismissal based on maliciousness for the purposes of § 1915. *See Daker v. Comm'r, Georgia Dep't of Corr.*, 820 F.3d 1278, 1283 (11th Cir. 2016) (stating that a dismissal based on frivolousness must indicate that the court did in fact deem the action frivolous before it can be considered a strike under § 1915), *cert. denied*, 137 S. Ct. 1227 (2017); *Rivera v. Allin*, 144 F.3d 719, 731 (11th Cir. 1998) (stating that, regardless of whether the word "malicious" was used, dismissals for abuse of the judicial process constitute strikes under § 1915, because they are "precisely the type of strike that Congress envisioned when drafting" the statute), *abrogated on other grounds by Jones v. Bock*, 549 U.S. 199 (2007).

In addition, the district court did not err in assessing filing fees, despite the fact that the case was dismissed. *See* 28 U.S.C § 1915(b)(1) ("[I]f a prisoner brings a civil action or files an appeal *in forma pauperis*, the prisoner shall be required to pay the full amount of a filing fee."). Finally, Reid cannot challenge the district court's conclusion that his appeal was not taken in good faith, or its denial of his motion for leave to proceed *in forma pauperis* on appeal. *See Gomez v. United States*, 245 F.2d 346, 347 (5th Cir. 1957) (holding that an order denying leave to proceed *in forma pauperis* on appeal "is not a final order from which an appeal will lie").

Accordingly, this Court now finds that the appeal is frivolous, DENIES leave to proceed, and DISMISSES the appeal.

APPENDIX B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

GORDON C. REID,

Plaintiff,

v.

Case No: 5:17-cv-324-Oc-10PRL

FNU LOCKETT, et al.,

Defendants.

ORDER DISMISSING CASE

Plaintiff, a federal inmate, filed his Amended Civil Rights Complaint on October 5, 2017. (Doc. 12.) He signed the Amended Complaint under penalty of perjury. (Id. at p. 28.) On October 18, 2017, the Court ordered Plaintiff to show cause why this case should not be dismissed for abuse of the judicial process because Plaintiff failed to truthfully disclose all of his prior federal cases. (Doc. 15.)

Plaintiff was questioned in Section VIII(C) of the Amended Complaint whether he had "filed other lawsuits in state or federal court otherwise relating to the conditions of your confinement?" Plaintiff checked "yes" and identified three previous lawsuits. (Doc. 12, pp. 26-27.) } }

However, the Court identified other federal civil cases brought by the Plaintiff regarding the conditions of his confinement: Reid v. Federal Bureau of Prisons, Case No. 1:13-cv-2149-JTT-JDK (W.D. La. 2013) (denying and dismissing

Plaintiff's claims regarding disciplinary proceedings and segregation); and Reid v. Strafford Cty. Dep' Corr., Case No. 1:06-cv-182-SM (D.N.H.) (denying Plaintiff's challenge to his treatment as a federal pre-trial detainee). See also Reid v. Simmons, Case No. 1:89-cv-152-SM (D.N.H. 1989) and Reid v. Bean, Case No. 1:92-cv-3-SC (D.N.H. 1992).

Plaintiff has responded to the Order to Show Cause, stating the previous cases he did not list where all outside the scope of conditions of confinement. (Doc. 21.)

The inquiry concerning a prisoner's prior lawsuits is not a matter of idle curiosity, nor is it an effort to raise meaningless obstacles to a prisoner's access to the courts. Rather, the existence of prior litigation initiated by a prisoner is required in order for the Court to apply 28 U.S.C. § 1915(g) (the "three strikes rule" applicable to prisoners proceeding *in forma pauperis*). Additionally, it has been the Court's experience that a significant number of prisoner filings raise claims or issues that have already been decided adversely to the prisoner in prior litigation. Identification of that prior litigation frequently enables the Court to dispose of the successive case without further expenditure of finite judicial resources.

In the absence of any basis for excusing a plaintiff's lack of candor, failure to disclose and truthfully describe previous lawsuits as clearly required on the Court's prisoner civil rights complaint form warrants dismissal of the complaint for abuse of the judicial process. See Redmon v. Lake County Sheriff's Office, 414

Fed. Appx. 221, 225 (11th Cir. Feb. 10, 2011).¹ In Redmon, the Eleventh Circuit affirmed the dismissal of a prisoner's civil rights complaint that did not disclose a previous lawsuit. The plaintiff argued that he "misunderstood" the form, but the Court held that the district court had the discretion to conclude that the plaintiff's explanation did not excuse his misrepresentation because the complaint form "clearly asked Plaintiff to disclose previously filed lawsuits[.]" Id. The Court determined that dismissal was an appropriate sanction:

Under 28 U.S.C. § 1915, "[a] finding that the plaintiff engaged in bad faith litigiousness or manipulative tactics warrants dismissal." Attwood v. Singletary, 105 F.3d 610, 613 (11th Cir. 1997). In addition, a district court may impose sanctions if a party knowingly files a pleading that contains false contentions. Fed.R.Civ.P. 11(c). Although *pro se* pleadings are held to a less stringent standard than pleadings drafted by attorneys, a plaintiff's *pro se* status will not excuse mistakes regarding procedural rules. McNeil v. United States, 508 U.S. 106, 113, 113 S.Ct. 1980, 1984, 124 L.Ed.2d 21 (1993).

Id. The failure to exercise candor in completing the form, while acknowledging that the answers are made under penalty of perjury, impedes the Court in managing its caseload and merits the sanction of dismissal. See Id.

The Court finds that Plaintiff's failure to fully disclose his previous lawsuits, under penalty of perjury, constitutes an abuse of the judicial process. See Rivera v. Allin, 144 F.3d 719, 731 (11th Cir. 1998). An appropriate sanction for such abuse of the judicial process is the dismissal of the Complaint. Id.

¹ Pursuant to 11th Cir. Rule 36-2, unpublished opinions are not binding precedent but may be cited as persuasive authority.

Accordingly, this case is hereby **DISMISSED without prejudice**. Such dismissal counts as a "strike" for the purposes of the three-strikes provision of the PLRA, 28 U.S.C. § 1915(g). The Clerk is directed to enter judgment dismissing this case without prejudice, terminate any pending motions, and close the file.

IT IS SO ORDERED.

DONE AND ORDERED at Ocala, Florida, this 19th day of January, 2018.

W. Penelle Holguin

UNITED STATES DISTRICT JUDGE

Copies to: Gordon C. Reid, *pro se*

APPENDIX C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

GORDON C. REID,

Plaintiff,

v.

Case No: 5:17-cv-324-Oc-10PRL

FNU LOCKETT, et al.,

Defendants.

ORDER TO SHOW CAUSE

On October 5, 2017, Plaintiff filed an Amended Complaint. He signed the Amended Complaint under penalty of perjury (Doc. 12). In Section VIII(C) of the Amended Complaint, Plaintiff was questioned whether he had "filed other lawsuits in state or federal court otherwise relating to the conditions of your confinement?" (Doc. 12, pp. 26-27.) Plaintiff checked "yes" and identified in three lawsuits: *Reid v. United States*, Case No. 5:12-cv-1416-M (W.D. Ok. 2012) (FTCA challenge regarding various incidents in federal custody dismissed for lack of subject matter jurisdiction); *Reid v. Ontivaroz*, Case No. 1:14-cv-1163-LJO-MJS (E.D. Calif. 2014) (pending case challenging conditions at USP Atwater); and *Reid v. Samuels*, Case No. 1:15-cv-375-RMC (D.D.C. 2015) (dismissing Plaintiff's requests for injunctive and mandamus relief related to deprivation of access to magazines, exercise, etc. while confined in the Special Housing Unit).

The Court, however, has identified other federal civil cases brought by the Plaintiff regarding the conditions of his confinement: *Reid v. Federal Bureau of Prisons*, Case No. 1:13-cv-2149-JTT-JDK (W.D. La. 2013) (denying and dismissing Plaintiff's claims regarding

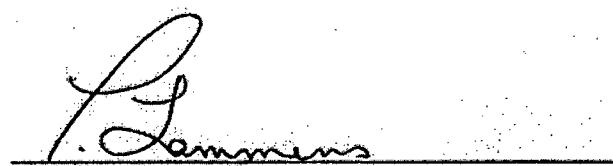
47

disciplinary proceedings and segregation); and *Reid v. Strafford Cty. Dep' Corr.*, Case No. 1:06-cv-182-SM (D.N.H.) (denying Plaintiff's challenge to his treatment as a federal pre-trial detainee). *See also Reid v. Simmons*, Case No. 1:89-cv-152-SM (D.N.H. 1989) and *Reid v. Bean*, Case No. 1:92-cv-3-SC (D.N.H. 1992).

Providing false information to the court is, in-and-of itself, a valid ground for dismissing a complaint. *See Redmon v. Lake County Sheriff's Office*, 414 F. App'x 221, 226 (11th Cir. 2011) (prisoner's failure to disclose previous lawsuit constituted abuse of judicial process warranting sanction of dismissal of his pro se § 1983 action); *see also Hood v. Tompkins*, 197 F. App'x 818, 819 (11th Cir. 2006) (upholding dismissal based on abuse of judicial process for failing to disclose prior litigation and holding that "the district court was correct to conclude that to allow [Plaintiff] to then acknowledge what he should have disclosed earlier would serve to overlook his abuse of the judicial process."); *Shelton v. Rohrs*, 406 F. App'x 340, 341 (11th Cir. 2010) (upholding district court's dismissal noting that "[e]ven if [Plaintiff] did not have access to his materials, he would have known that he filed multiple previous lawsuits."); *Young v. Secretary Fla. for Dept. of Corr.*, 380 F. App'x 939 (11th Cir. 2010) (same).

Within **FOURTEEN (14) DAYS** Plaintiff shall show cause to this Court why he should not be subject to sanctions, including, but not limited to, the dismissal of the instant case without prejudice due to his failure to honestly apprise this Court of his litigation history. Should Plaintiff fail to satisfactorily respond to this Order within this time period, the instant case will be dismissed without prejudice, and Plaintiff will have to re-file a completely new complaint should he wish to proceed. No further notice will be provided.

DONE AND ORDERED at Ocala, Florida, this 18th day of October 2017.



PHILIP R. LAMMENS
United States Magistrate Judge

Copies to: Pro Se Parties, Counsel of Record

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

April 05, 2018

Gordon C. Reid
USP Lewisburg - Inmate Legal Mail
PO BOX 1000
LEWISBURG, PA 17837

Appeal Number: 18-10392-D
Case Style: Gordon Reid v. Warden, et al
District Court Docket No: 5:17-cv-00324-WTH-PRL

The district court has denied your motion to proceed on appeal in forma pauperis, certifying that your appeal is frivolous and not taken in good faith. The district court has also directed that you pay fees required to maintain this appeal pursuant to 28 U.S.C. § 1915 (as amended by the Prison Litigation Reform Act).

Pursuant to Fed.R.App.P. 24(a) and 11th Cir. R 24-2, you must file a motion for leave to proceed with this appeal within thirty (30) days from the date of this letter. If such a motion is not received within thirty (30) days, this appeal will be dismissed by the clerk without further notice pursuant to 11th Cir. R. 42-2.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Scott O'Neal/mg, D
Phone #: (404) 335-6189

PLRA-7 Ltr DC dn Lv FF assessed