

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

17-3030

James Biggins v. Carl Danberg, et al

1-12-cv-01666

O R D E R

Pursuant to Fed. R. App. P. 3(a) and 3rd Cir. LAR 3.3 and Misc. 107.1(a), it is

ORDERED that the above-captioned case is hereby dismissed for failure to timely prosecute insofar as appellant failed to pay the requisite fee as directed. It is

FURTHER ORDERED that a certified copy of this order be issued in lieu of a formal mandate.

For the Court,

s/ Patricia S. Dodszuweit
Clerk

Date: March 6, 2018

kr/cc: Mr. James Arthur Biggins
Eileen M. Ford, Esq.
Marc Sposato, Esq.



Patricia S. Dodszuweit
Patricia S. Dodszuweit, Clerk
Certified Order Issued in Lieu of Mandate

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
February 23, 2018
CCO-051

No. 17-3030

JAMES ARTHUR BIGGINS,
Appellant

v.

CARL C. DANBERG, Commissioner of Department of Corrections; et al.

(D. Del. No. 1-12-cv-01666)

Present: CHAGARES, GREENAWAY, JR. and GREENBERG, Circuit Judges

1. Motion En Banc by Appellant construed as Motion to Reconsider
Order dated February 9, 2018 pursuant to I.O.P 10.3.3;
2. Letter from Appellees advising that a formal response will not be filed.

Respectfully,
Clerk/kr

ORDER

The foregoing motion is denied.

By the Court,

s/ Morton I. Greenberg
Circuit Judge

Dated: March 6, 2018

kr/cc: James Arthur Biggins
Eileen M. Ford, Esq.
Marc Sposato, Esq.

CLD-100

January 11, 2018

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **17-3030**

JAMES ARTHUR BIGGINS, Appellant

VS.

CARL C. DANBERG, Commissioner of Department of Corrections, et al.

(D. Del. Civ. No. 12-cv-01666)

Present: GREENAWAY, JR., Circuit Judge

Submitted are:

- (1) Appellant's motion to proceed in forma pauperis; and
- (2) Appellant's motion alleging imminent danger

in the above-captioned case.

Respectfully,

Clerk

ORDER

Appellant's motion to proceed in forma pauperis ("IFP") is denied. Appellant has at least three strikes against him under 28 U.S.C. § 1915(g). Appellant thus can proceed IFP in this appeal only if he was "under imminent danger of serious physical injury" at the time he filed his appeal. 28 U.S.C. § 1915(g); see Abdul-Akbar v. McKelvie, 239 F.3d 307, 312 (3d Cir. 2001) (en banc). Appellant has not made this showing, as his challenges to the quality of his medical care do not satisfy the imminent danger standard. See Ball v. Famiglio, 726 F.3d 448, 467-68 (3d Cir. 2013) (disagreements over quality of care and vague assertions that care has been withheld do not amount to a showing of imminent danger).

Accordingly, if Appellant wishes to proceed with his appeal of the District Court's order, he must pay the full applicable filing and docketing fees in the amount of \$505 to

the Clerk of the United States District Court for the District of Delaware within 14 days of the date of this order. No extensions of time to pay the fees will be granted. Failure to pay the filing and docketing fees within that time will result in dismissal of the appeal without further notice. See 3d Cir. LAR Misc. 107.1(a).

By the Court,

s/Joseph A. Greenaway, Jr.
Circuit Judge

Dated: February 9, 2018

kr/cc: James Arthur Biggins
Eileen M. Ford, Esq.
Marc Sposato, Esq.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

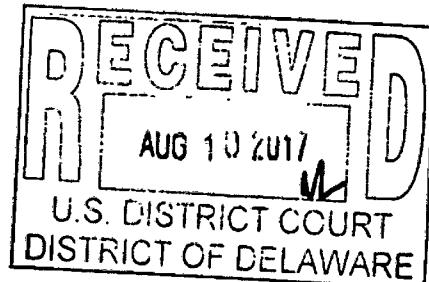
JAMES ARTHUR BIGGINS,)
Plaintiff,)
v.) Civ. Action No. 12-1666-GMS
BERNARD ADDOGOH, et al.,)
Defendants.)

ORDER

At Wilmington this 10 day of May, 2017, for the reasons set forth in
the Memorandum issued this date,

IT IS HEREBY ORDERED that the plaintiff's motion for relief from judgment pursuant to Fed. R. Civ. P. 60(d)(1) is denied. (D.I. 85.)


UNITED STATES DISTRICT JUDGE



IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

JAMES ARTHUR BIGGINS,)
Plaintiff,)
v.) Civ. Action No. 12-1666-GMS
BERNARD ADDOGOH, et al.,)
Defendants.)

MEMORANDUM

I. INTRODUCTION

The plaintiff, James Arthur Biggins (“Biggins”), an inmate at the James T. Vaughn Correctional Center (“VCC”), Smyrna, Delaware, filed this lawsuit on December 6, 2012. (D.I. 2.) Biggins appears *pro se* and was granted permission to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (D.I. 9.)

II. BACKGROUND

The complaint raises medical needs issues. Upon screening, several defendants were dismissed and the case proceeded against the defendants Bernard Addogoh (“Addogoh”) and Dr. Louis Desrosiers-Roddeck (“Dr. Desrosiers”) (together “the defendants”). (D.I. 11, 12.) On June 23, 2015, the court granted the defendants’ motion for summary judgment on the grounds that Biggins failed to exhaust his administrative remedies as is required under the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a). (D.I. 79.) Biggins’ moved for reconsideration and his motion was denied on July 15, 2015. (D.I. 82.) Biggins did not appeal any court rulings.

On January 6, 2017, Biggins filed the instant motion for relief under Fed. R. Civ. P. 60(d)(1). (D.I. 85.) He did not serve a copy of the motion upon counsel of record.

III. DISCUSSION

Biggins seeks relief pursuant to Fed. R. Civ. P. 60(d)(1) on the grounds that the court made a clear error of law in granting the defendants' motion for summary judgment. Biggins contends that he has been denied a fair opportunity to the defense of his claims based upon the court's ruling. (D.I. 85 at 2.)

Relief is available under Rule 60(d)(1) only in extraordinary circumstances where relief is necessary to "prevent a grave miscarriage of justice." *See Jackson v. Danberg*, 656 F.3d 157, 166 (3d Cir. 2011) (quoting *United States v. Beggerly*, 524 U.S. 38, 47 (1998)). Biggins "must show a meritorious claim or defense" and "relief under Rule 60(d) is reserved for the rare and exceptional case where a failure to act would result in a miscarriage of justice." *See Sharpe v. United States*, 2010 WL 2572636, at *2 (E.D. Pa. June 22, 2010) (citing *Beggerly*, 524 U.S. at 42-46); Brown, 2013 WL 3742444, at *8-9.

As noted, the court granted the defendants' motion for summary judgment on the grounds that Biggins failed to exhaust his administrative remedies prior to commencement of the case, in part, based upon Biggins' position that he was not required to exhaust his administrative remedies, (*see* D.I. 78 at 1), and in part based upon the record that indicates that Biggins exhausted his administrative remedies while the case was pending (*see* D.I. 74 at ex. C, grievance submitted on November 25, 2012, commencement of case on December 6, 2012, grievance denied on January 10, 2012, grievance appeal denied on February 4, 2013). Exhaustion during the pendency of the case does not change the outcome given that dismissal of an inmate's claim is appropriate when a prisoner has failed to exhaust his available administrative remedies before bringing a civil rights action. *See Ahmed v. Sromovski*, 103 F. Supp. 2d 838, 843 (E.D. Pa.2

000). "Exhaustion must occur prior to filing suit, not while the suit is pending." *Millbrook v. United States*, 8 F. Supp. 3d 601, 611 (M.D. Pa. 2014) (citations omitted); *see also Oriakhi v. United States*, 165 F. App'x 991, 993 (3d Cir. 2006) (unpublished) (under the PLRA, prisoner must exhaust all available administrative remedies prior to filing suit).

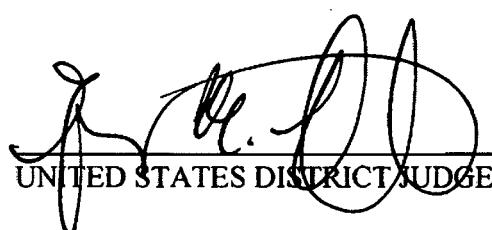
Biggins now claims that he exhausted his administrative remedies and provides the court with a grievance he submitted on August 4, 2004, for an incident that occurred on November 21, 1997. (D.I. 85 at ex. A.) His complaint, filed in December 2012, refers to an incident that occurred in October 2012. (*See* D.I. 2.) Only if Biggins is clairvoyant would he be able to submit a grievance in 2004 for a claim that would occur in 2012.

Biggins has not supplied any extraordinary circumstances or reason to believe that a grave miscarriage of justice has occurred in this case. Accordingly, the court will deny his request for relief under Rule 60(d)(1).

IV. CONCLUSION

For the reasons stated, the court will deny the motion for relief from judgment pursuant to Fed. R. Civ. P. 60(d)(1). (D.I. 85.)

An appropriate order will be entered.



UNITED STATES DISTRICT JUDGE

Aug 10, 2017
Wilmington, Delaware

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