

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-31239



DERRICK SCOTT,

Plaintiff - Appellant

v.

A True Copy

Certified order issued Jan 04, 2019

Lyle W. Cayce

Clerk, U.S. Court of Appeals, Fifth Circuit

ALLEN STARK, in their individual and official capacity; TIM HOOPER, in their individual and official capacity; PERRY STAGG, in their individual and official capacity; UNKNOWN BARRERE, Warden, in their individual and official capacity,

Defendants - Appellees

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

CLERK'S OFFICE:

Under 5TH CIR. R. 42.3, the appeal is dismissed as of January 4, 2019, for want of prosecution. The appellant failed to timely pay the fee.

LYLE W. CAYCE

Clerk of the United States Court
of Appeals for the Fifth Circuit

Allison Lopez

By: _____
Allison G. Lopez, Deputy Clerk

ENTERED AT THE DIRECTION OF THE COURT

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

DERRICK SCOTT (#126372)

VERSUS

MAJOR BUTLER, ET AL.

CIVIL ACTION

NO. 18-878-JWD-RLB

ORDER

This matter comes before the Court on the plaintiff's Complaint (R. Doc. 1).

The *pro se* plaintiff, an inmate incarcerated at the Louisiana State Penitentiary ("LSP"), Angola, Louisiana, filed this action pursuant to 42 U.S.C. § 1983 against Allen Stark, Tim Hooper, Perry Stagg, and Warden Barre alleging that his constitutional rights were violated due to the use of excessive force, retaliation, and denial of access to the courts while housed at Elyan Hunt Correctional Center in November of 2017.

The statute applicable to the granting by federal courts of *in forma pauperis* status to inmates in civil proceedings makes clear that the plaintiff is not entitled to proceed as a pauper in this case. 28 U.S.C. § 1915(g) provides:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.¹

A review of the records of this Court reflects that the plaintiff has, on three or more prior occasions while incarcerated, brought actions or appeals in the federal court that have been dismissed as frivolous, malicious, or for failure to state a claim.² Accordingly,

¹ The plaintiff has not alleged, and the Court does not find, that the plaintiff is under imminent danger of serious physical injury. The plaintiff's Complaint pertains to events happening in the past while previously housed at a different facility.

² Cases or appeals filed by the plaintiff which have been dismissed by the federal courts as frivolous or for failure to state a claim include, but are not limited to, *Derrick Scott v. James M. LeBlanc, et al.*, Civil Action No. 12-0239-BAJ-SCR (M.D., La.), *Derrick Scott v. Burl Cain*, Civil Action No. 12-0412-JJB-DLD (M.D., La.), and *Derrick*

IT IS ORDERED that the plaintiff is granted twenty-one (21) days from the date of this Order within which to pay \$400.00, the full amount of the Court's filing fee. The filing fee must be paid in full in a single payment. No partial payments will be accepted. Failure to pay the Court's filing fee within 21 days shall result in the dismissal of the plaintiff's action without further notice from the Court.

Signed in Baton Rouge, Louisiana, on November 16, 2018.



RICHARD L. BOURGEOIS, JR.
UNITED STATES MAGISTRATE JUDGE

Scott v. Officer Haney, et al., Civil Action No. 12-0439-JJB-DLD (M.D., La.). The first two referenced cases were dismissed because the plaintiff's Complaints made clear that he had failed to exhaust administrative remedies as mandated by 42 U.S.C. § 1997e, and the United States Court of Appeals for the Fifth Circuit has concluded that the dismissal of an action for failure to state a claim is appropriate when it is clear from the face of a plaintiff's Complaint that he has not exhausted administrative remedies. See *Carbe v. Lappin*, 492 F.3d 325, 328 (5th Cir. 2007). In addition, such dismissals may be treated as "strikes" within the context of 28 U.S.C. § 1915(g). See *Emmett v. Ebner*, 423 Fed. Appx. 492 (5th Cir. 2011); *Martinez v. Bus Driver*, 344 Fed. Appx. 46 (5th Cir. 2009); *Johnson v. Kukua*, 342 Fed. Appx. 933 (5th Cir. 2009). Finally, the Court hereby takes judicial notice of proceedings before this Court in *Derrick Scott v. Trish Foster, et al.*, Civil Action No. 13-0665-JJB-RLB (M.D. La.), wherein both this Court and the Fifth Circuit Court of Appeals found that the plaintiff had accumulated three strikes.