

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-10979
Non-Argument Calendar

D.C. Docket No. 1:18-cv-00219-TCB

ROBERT L. CLARK,
Macon State Prison,

Plaintiff-Appellant,

versus

CARROLL COUNTY SHERIFF'S DEPT.,
HARALSON COUNTY SHERIFF'S DEPT.,
DONALD WILSON,
PETER JOHN SKANDALAKIS,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

(March 5, 2019)

Before MARCUS, ROSENBAUM, and EDMONDSON, Circuit Judges.

PER CURIAM:

Robert Clark, a Georgia prisoner proceeding pro se, appeals the district court's dismissal of his complaint filed pursuant to 42 U.S.C. § 1983. Pursuant to the "three-strikes" provision of the Prison Litigation Reform Act ("PLRA"), 28 U.S.C. § 1915(g), the district court dismissed without prejudice Clark's complaint. No reversible error has been shown; we affirm.

Section 1915 of Title 28 allows indigent prisoners seeking to bring suit to do so without prepaying fully applicable filing fees. 28 U.S.C. § 1915(a) and (b). Section 1915(g) -- known as the "three-strikes" provision -- denies that option for prisoners who, while incarcerated, have initiated at least three earlier lawsuits or appeals in federal court that were dismissed as frivolous, malicious, or failing to state a claim "unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g). To qualify for the "imminent danger" exception, a prisoner plaintiff with three strikes must allege that he is in present, imminent danger of serious physical injury at the time of filing the complaint. Medberry v. Butler, 185 F.3d 1189, 1193 (11th Cir. 1999).

Here, the district court concluded that Clark had filed at least three prior cases while incarcerated that were dismissed as frivolous, malicious, or for failure

to state a claim. The district court also concluded that Clark was under no current imminent threat of serious injury.

On appeal, Clark argues only about the merits of his underlying complaint. Construed liberally, Clark's one-page appellate brief raises no challenge to the district court's determination that Clark had at least three "strikes" or to the determination that Clark had failed to allege facts sufficient to satisfy section 1915(g)'s imminent-danger exception. "While we read briefs filed by pro se litigants liberally, issues not briefed on appeal by a pro se litigant are deemed abandoned." Timson v. Sampson, 518 F.3d 870, 874 (11th Cir. 2008).

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ROBERT L. CLARK,

Plaintiff,

v.

CARROLL COUNTY SHERIFF'S
OFFICE, et al.,

Defendants.

PRISONER CIVIL RIGHTS

42 U.S.C. § 1983

CIVIL ACTION FILE

NO. 1:18-cv-219-TCB

O R D E R

This case comes before the Court on Magistrate Judge Russell G. Vineyard's report and recommendation ("R&R") [3] and Clark's objections thereto [5]. The R&R recommends that this action be dismissed without prejudice pursuant to the three-strikes rule of 28 U.S.C. § 1915(g). Clark has filed objections to the R&R.

A district judge has a duty to conduct a "careful and complete" review of a magistrate judge's R&R. *Williams v. Wainwright*, 681 F.2d 732, 732 (11th Cir. 1982) (per curiam) (quoting *Nettles v. Wainwright*, 677 F.2d 404, 408 (5th Cir. Unit B 1982)). This review may take different forms, however, depending on whether there are objections to

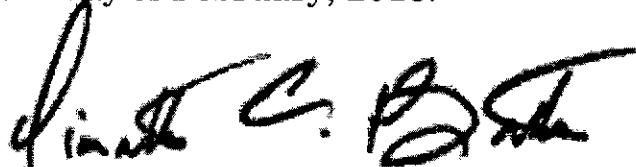
the R&R. The district judge must “make a de novo determination of those portions of the [R&R] to which objection is made.” 28 U.S.C. § 636(b)(1)(C). In contrast, those portions of the R&R to which no objection is made need only be reviewed for “clear error.” *Macort v. Prem, Inc.*, 208 F. App’x 781, 784 (11th Cir. 2006) (per curiam) (quoting *Diamond v. Colonial Life & Accident Ins.*, 416 F.3d 310, 315 (4th Cir. 2005)).²

After conducting a complete and careful review of the R&R, the district judge “may accept, reject, or modify” the magistrate judge’s findings and recommendations. 28 U.S.C. § 636(b)(1)(C); *Williams*, 681 F.2d at 732. The district judge “may also receive further evidence or recommit the matter to the magistrate judge with instructions.” 28 U.S.C. § 636(b)(1)(C).

² *Macort* dealt only with the standard of review to be applied to a magistrate’s factual findings, but the Supreme Court has indicated that there is no reason for the district court to apply a different standard to a magistrate’s legal conclusions. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Thus, district courts in this circuit have routinely reviewed both legal and factual conclusions for clear error. See *Tauber v. Barnhart*, 438 F. Supp. 2d 1366, 1373–74 (N.D. Ga. 2006) (collecting cases). This is to be contrasted with the standard of review on appeal, which distinguishes between the two. See *Monroe v. Thigpen*, 932 F.2d 1437, 1440 (11th Cir. 1991) (holding that when a magistrate’s findings of fact are adopted by the district court without objection, they are reviewed on appeal under a “plain error standard” while questions of law always remain subject to de novo review).

Clark's objections all pertain to the merits of his complaint, and claims and parties he seeks to add. He does not address the conclusion of the R&R that his complaint should be dismissed without prejudice because he "has filed at least three prior cases while incarcerated that were dismissed either as frivolous, malicious, or for failure to state a claim." [3] at 2. The Court agrees with the R&R's conclusion that Clark's prior dismissals make him unable to bring a civil action in forma pauperis and his complaint should be dismissed without prejudice. If he seeks to re-file his complaint, his must pay the filing fee at the time he initiates the suit. *See Dupree v. Palmer*, 284 F.3d 1234, 1236 (11th Cir. 2002) (per curiam). Clark's objections [5] are overruled and the Court adopts as its order the R&R [3]. Clark's complaint [1] is dismissed without prejudice and the Clerk is directed to close this case.

IT IS SO ORDERED this 15th day of February, 2018.



Timothy C. Batten, Sr.
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

ROBERT L. CLARK, Plaintiff,	:: PRISONER CIVIL RIGHTS :: 42 U.S.C. § 1983 :: v.	:: :: ::
CARROLL COUNTY SHERIFF'S DEPT.; et al., Defendants.	:: CIVIL ACTION NO. :: 1:18-CV-0219-TCB-RGV ::	

FINAL REPORT AND RECOMMENDATION

Plaintiff Robert L. Clark, presently confined in the Macon State Prison in Oglethorpe, Georgia, has filed this pro se civil rights action against two Sheriff's Departments¹ and two district attorneys² seeking release from imprisonment³ and monetary relief based on his allegations that he was arrested without a warrant,

¹ A Sheriff's Department is not a legal entity subject to suit under 42 U.S.C. § 1983. Dean v. Barber, 951 F.2d 1210, 1214 (11th Cir. 1992).

² "A prosecutor is entitled to absolute immunity for all actions he takes while performing his function as an advocate for the government," including "the initiation and pursuit of criminal prosecution." Rivera v. Leal, 359 F.3d 1350, 1353 (11th Cir. 2004) (citations omitted).

³ Such relief is available only in a habeas corpus petition. Preisser v. Rodriguez, 411 U.S. 475, 500 (1973).

maliciously prosecuted, and falsely imprisoned.⁴ [Doc. 1; Doc. 2 at 5-6]. Plaintiff also seeks leave to proceed in forma pauperis. [Doc. 2].

A prisoner may not bring a civil action in federal court in forma pauperis “if [he] 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 [was] frivolous, malicious, or fail[ed] to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). Plaintiff has filed at least three prior cases while incarcerated that were dismissed either as frivolous, malicious, or for failure to state a claim. See Clark v. Ga. Sup. Ct. Judges, No. 1:17-CV-1172-TCB-RGV (N.D. Ga. May 5, 2017); Clark v. All Judges in the Ga. Sup. Ct., No. 1:17-CV-0557-TCB-RGV (N.D. Ga. Mar. 30, 2017); Clark v. Heinstein, No. 3:12-CV-0083-TCB-RGV (N.D. Ga. July 9, 2012); Clark v. Carroll Cty. Jail, No. 3:04-CV-0030-JTC (N.D. Ga. Aug. 20, 2004); Clark v. Haralson Cty. Jail, No. 3:03-CV-0170-JTC (N.D. Ga. Jan. 21,

⁴ Although plaintiff also alleges that he has not received adequate treatment for his Hepatitis B and bi-polar disorder during his fourteen years of incarceration, [Doc. 1 at 5; Doc. 2 at 5-6], he does not allege that a named defendant is directly responsible for this alleged deprivation. See Douglas v. Yates, 535 F.3d 1316, 1322 (11th Cir. 2008) (“[A] complaint will be held defective . . . if [it] fails to connect the defendant with the alleged wrong.”). Accordingly, this allegation will not be addressed further.

2004); Clark v. Hudson, No. 1:03-CV-0778-RLV (N.D. Ga. Apr. 17, 2003); Clark v. Cobb Cty. Adult Det. Ctr., No. 1:02-CV-2391-RLV (N.D. Ga. Nov. 7, 2002); Clark v. Ingram, 1:02-CV-2485-RLV (N.D. Ga. Nov. 1, 2002). Plaintiff's allegations against the named defendants do not show that he is under a current imminent threat of serious injury. [Doc. 1]. Therefore, pursuant to § 1915(g), plaintiff cannot proceed in forma pauperis in this action.

When § 1915(g) bars a prisoner from proceeding in forma pauperis, "the proper procedure is . . . to dismiss the complaint without prejudice." Dupree v. Palmer, 284 F.3d 1234, 1236 (11th Cir. 2002) (per curiam). "The prisoner cannot simply pay the filing fee after being denied in forma pauperis status. He must pay the filing fee at the time [s]he initiates the suit." Id. Accordingly, it is **RECOMMENDED** that this action be **DISMISSED WITHOUT PREJUDICE**.

The Clerk is **DIRECTED** to terminate the referral to the assigned Magistrate Judge.

SO RECOMMENDED, this 25th day of JANUARY, 2018.


RUSSELL G. VINEYARD
UNITED STATES MAGISTRATE JUDGE