IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
December 5, 2018
Lyle W. Cayce
Clerk

No. 18-30531

DEON TREMELL LEE,

Plaintiff-Appellant

v.

UNITED STATES OF AMERICA; UNITED STATES SUPREME COURT; UNITED STATES CONGRESS; STATE OF LOUISIANA,

Defendants-Appellees

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 2:18-CV-182

Before JONES, ELROD, and ENGELHARDT, Circuit Judges.

PER CURIAM:*

Deon Tremell Lee, Louisiana prisoner # 375231, moves for leave to proceed in forma pauperis (IFP) in this appeal of the sua sponte dismissal of his case. The motion is a challenge to the district court's certification that the appeal is not taken in good faith. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997).

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Lee fails to address the district court's reasons for finding his case to be frivolous. Pro se briefs are afforded liberal construction. *See Yohey v. Collins*, 985 F.2d 222, 225 (5th Cir. 1993). Nevertheless, when an appellant fails to identify any error in the district court's analysis, it is the same as if the appellant had not appealed the decision. *Brinkmann v. Dallas Cty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987).

Because Lee has failed to challenge any factual or legal aspect of the district court's disposition of his claims or the certification that his appeal is not taken in good faith, he has abandoned the critical issue of his appeal. *See id.* Thus, the appeal lacks arguable merit. *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Accordingly, the motion for leave to proceed IFP is denied, and the appeal is dismissed as frivolous. *See Baugh*, 117 F.3d at 202 n.24; 5TH CIR. R. 42.2.

The dismissal of the complaint by the district court and the dismissal of this appeal as frivolous constitute two strikes under 28 U.S.C. § 1915(g). *See Adepegba v. Hammons*, 103 F.3d 383, 387-88 (5th Cir. 1996), *abrogated in part on other grounds by Coleman v. Tollefson*, 135 S. Ct. 1759, 1762-63 (2015). Lee is WARNED that accumulating a third strike will preclude him from proceeding IFP in any civil action or appeal while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. *See* § 1915(g).

IFP MOTION DENIED; APPEAL DISMISSED AS FRIVOLOUS; SANCTION WARNING ISSUED

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

DEON TREMELL LEE	*	**CIVIL ACTION NO. 2:18-CV-182**
DOC # 375231	*	**SECTION P**
	*	
VERSUS	*	**JUDGE ROBERT G. JAMES**
	*	
UNITED STATES OF AMERICA, ET AL.	*	**MAGISTRATE JUDGE KAY**
	*	
	*	
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JUDGMENT

For the reasons stated in the Report and Recommendation [Doc. No. 7] of the Magistrate Judge previously filed herein, after a *de novo* review of the record, determining that the findings are correct under the applicable law, and considering the objections to the Report and Recommendation in the record,

IT IS ORDERED, ADJUDGED AND DECREED that the plaintiff's claims are **DISMISSED WITH PREJUDICE** as frivolous under 28 U.S.C. § 1915(e)(2)(B)(i).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff's Motion for Immediate Judgment [Doc. No. 10] is **DENIED AS MOOT**.

The Clerk of Court is instructed to send a copy of this Judgment to the keeper of the three strikes list in Tyler, Texas.

Monroe, Louisiana, this 13th day of April, 2018.

Robert G. James

ROBERT G. JAMES
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

DEON TREMELL LEE **DOC # 375231**	:	**DOCKET NO. 18-cv-182** **SECTION P**
VERSUS	:	**UNASSIGNED DISTRICT JUDGE**
UNITED STATES OF AMERICA, ET AL.	:	**MAGISTRATE JUDGE KAY**

REPORT AND RECOMMENDATION

Before the court is the civil rights complaint [doc. 1] filed pursuant to 42 U.S.C. § 1983 by plaintiff Deon Tremell Lee, who is proceeding *pro se* and *in forma pauperis*. Lee is a prisoner in the custody of the Louisiana Department of Public Safety and Corrections and is currently confined at Vernon Correctional Facility in Leesville, Louisiana.

This matter has been referred to the undersigned for review, report, and recommendation in accordance with 28 U.S.C. § 636 and the standing orders of this court. For reasons stated below, it is recommended that the petition be **DISMISSED WITH PREJUDICE** as frivolous under 28 U.S.C. § 1915(e)(2)(B)(i).

I.
BACKGROUND

Lee brings this suit against the United States of America, the United States Congress, the United States Supreme Court, and the State of Louisiana. Doc. 1, p. 3. He alleges that he was "denationalized" by these defendants at birth when "the slave identifying marks of Black, colored and Negro [were] applied to [him]," in violation of the 13th Amendment to the United States Constitution. *Id.* In relief he requests that the court correct his status by allowing him to proclaim

the "free nationality of [his] forefathers, their national name, number, creed, constitution, bylaws, flag and seal under [his] own fig tree and vine to all nations and governments," based on his "'proper status' of Moorish American." *Id.* at 4 (capitalization corrected).

II.
LAW & ANALYSIS

A. Frivolity Review

Lee has been granted leave to proceed *in forma pauperis* in this matter. Accordingly, his complaint is subject to screening under 28 U.S.C. § 1915(e)(2), which provides for *sua sponte* dismissal of the complaint or any portion thereof if the court determines that it is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B)(i)–(iii).

A complaint is frivolous if it lacks an arguable basis in law or fact. *Gonzalez v. Wyatt*, 157 F.3d 1016, 1019 (5th Cir. 1998). A complaint fails to state a claim upon which relief may be granted if it is clear the plaintiff cannot prove any set of facts in support of his claim that would entitle him to relief. *Doe v. Dallas Indep. Sch. Dist.*, 153 F.3d 211, 215 (5th Cir. 1998). When determining whether a complaint is frivolous or fails to state a claim upon which relief may be granted, the court must accept plaintiff's allegations as true. *Horton v. Cockrell*, 70 F.3d 397, 400 (5th Cir. 1995) (frivolity); *Bradley v. Puckett*, 157 F.3d at 1025 (failure to state a claim).

B. Section 1983/Bivens

Federal law provides a cause of action against any person who, under the color of state law, acts to deprive another person of any right, privilege, or immunity secured by the Constitution and laws of the United States. 42 U.S.C. § 1983. A *Bivens* action is the counterpart for defendants acting under color of federal law of a suit brought under § 1983. *E.g.*, *Abate v. Southern Pacific Transp. Co.*, 993 F.2d 107, 110 n. 14 (5th Cir. 1993). In order to hold the defendants liable, a

plaintiff must allege facts to show (1) that a constitutional right has been violated and (2) that the conduct complained of was committed by a person acting under color of state law; that is, that the defendant was a state actor (or, in a *Bivens* suit, under color of federal law/that the defendant was a federal actor). *West v. Atkins*, 108 S.Ct. 2250, 2254–55 (1988); *see Bell v. Laborde*, 204 Fed. App'x 344, 345 n. 2 (5th Cir. 2006) (unpublished) (describing extension of test in *West* for *Bivens* claims).

C. Theories of the Complaint

Lee's suit is clearly based on his claim that he is a "sovereign citizen." There is no constitutional support for this theory, and in fact the Fourteenth Amendment provides that "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside." U.S. Const. amend. XIV, § 1. Courts routinely dismiss sovereign citizen claims as frivolous or otherwise lacking merit. *See, e.g., Wirsche v. Bank of Am., N.A.*, 2013 WL 6564657 at *2 (S.D. Tex. Dec. 13, 2013) (noting that "[t]hese teachings have never worked in a court of law – not a single time."); *West v. Enns*, 2017 WL 2313469 at *3 (N.D. Tex. Apr. 27, 2017) (collecting cases on dismissals of sovereign citizen claims). There is no constitutional allegation in this action outside of the sovereign citizen claim, such that it might be rescued by amendment. Accordingly, Lee's suit is frivolous and must be dismissed under § 1915(e)(2)(B)(i).

III.
CONCLUSION

Ordinarily, a *pro se* litigant should be given the opportunity to amend his complaint before it is dismissed. *Bazrowx v. Scott*, 136 F.3d 1054, 1054 (5th Cir. 1998). Opportunity to amend is not required, however, if the petitioner has already pleaded his "best case." *Brewster v. Dretke*,

587 F.3d 764, 768 (5th Cir. 2009). Here no amendment could cure the frivolous nature of Lee's claim.

Accordingly, for reasons stated above, **IT IS RECOMMENDED** that this action be **DISMISSED WITH PREJUDICE** under 28 U.S.C. § 1915(e)(2)(B)(i).

Pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties have fourteen (14) days from receipt of this Report and Recommendation to file written objections with the Clerk of Court. Failure to file written objections to the proposed factual findings and/or the proposed legal conclusions reflected in this Report and Recommendation within fourteen (14) days of receipt shall bar an aggrieved party from attacking either the factual findings or the legal conclusions accepted by the District Court, except upon grounds of plain error. *See Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1429–30 (5th Cir. 1996).

THUS DONE AND SIGNED in Chambers this 1st day of March, 2018.

KATHLEEN KAY
UNITED STATES MAGISTRATE JUDGE