

No. 18-1953

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Jan 14, 2019

DEBORAH S. HUNT, Clerk

DARRYL A. ROBINSON,

)

Plaintiff-Appellant,

)

v.

)

ORDER

UNKNOWN] MAWER; [UNKNOWN] LAHR;)

GEORGE WALKER BUSH; WILLIE O.)

SMITH, Warden,)

)

Defendants-Appellees.

)

Ten years after entry of the order dismissing his complaint, the plaintiff filed a notice of appeal. The plaintiff was earlier advised that if he filed any further appeals in the originating district court case, he was required to pay the appellate filing fee in full. *Robinson v. [Unknown] Mawer, et al.*, No. 16-2699 (6th Cir. Jan. 12, 2017) (Order).

The plaintiff having failed to pay the filing fee, the appeal hereby is dismissed for want of prosecution.

ENTERED PURSUANT TO RULE 45(a)
RULES OF THE SIXTH CIRCUIT



Deborah S. Hunt, Clerk

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DARRYL A. ROBINSON,

Plaintiff,

Case No. 1:08-cv-353

v.

Honorable Robert J. Jonker

(UNKNOWN) MAWER et al.,

Defendants.

ORDER OF DISMISSAL

This is a civil rights action brought by a state prisoner under 42 U.S.C. § 1983. On May 2, 2008, the Court issued an opinion and order (docket ##3, 4) denying Plaintiff leave to proceed *in forma pauperis* because he was barred by the “three-strikes” rule of 28 U.S.C. § 1915(g). The Court required Plaintiff to pay the \$350.00 civil action filing fee within thirty days, and the Court warned that his case would be dismissed without prejudice should he fail to pay. The Court also warned that Plaintiff would be responsible for payment of the \$350.00 filing fee in accordance with *In re Alea*, 286 F.3d 378, 380-81 (6th Cir. 2002).

More than thirty days have elapsed since the Court’s order requiring Plaintiff to pay the filing fee, and Plaintiff has not paid the fee. Plaintiff, however, has filed a response (docket #5) to the Court’s May 2, 2008 opinion and order. In his response, Plaintiff acknowledges that he has filed 48 prior civil actions in the federal court, including four habeas corpus actions. He argues that, notwithstanding the eight cases enumerated by the Court as having been dismissed for being frivolous, malicious or failing to state a claim, each of his prior lawsuits could have been proven.

As a result, he argues, none of the prior dismissals should be counted against him as a “strike” under 28 U.S.C. § 1915(g). Plaintiff’s argument is itself frivolous. Even if Plaintiff believes he could “prove” his prior allegations, this Court previously has held that those allegations did not state cognizable federal civil rights violations. Plaintiff indisputably has far more than three strikes under § 1915(g).

Given that Plaintiff has failed to comply with the Court’s May 2, 2008 order by paying the full filing fee, the instant action will be dismissed without prejudice. Because the obligation to pay the full filing fee arises at the time the civil complaint is filed in the Court, Plaintiff remains liable for payment of the civil action filing fee despite the dismissal of his action. *See In re Alea*, 286 F.3d at 381. Not to require payment of the full filing fee would permit a prisoner subject to the three-strikes rule to continue to file frivolous civil complaints without financial consequence. *Id.* Accordingly, the agency having custody of Plaintiff shall collect the \$350.00 civil action filing fee and remit the funds to the Clerk of this Court. The check or money order shall be payable to “Clerk, U.S. District Court” and must indicate the case number in which the payment is made. Therefore:

IT IS ORDERED that the captioned case be and hereby is **DISMISSED** without prejudice.

IT IS FURTHER ORDERED that the agency having custody of Plaintiff shall collect the \$350.00 civil action filing fee and remit the funds to the Clerk of this Court.

IT IS ALSO ORDERED that for the same reasons that the Court dismisses the action, the Court discerns no good-faith basis for an appeal. *See* 28 U.S.C. § 1915(a)(3); *McGore v. Wrigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997). Further, should Plaintiff appeal this decision,

he must pay the \$455.00 appellate filing fee in a lump sum, because he is prohibited from proceeding *in forma pauperis* on appeal by 28 U.S.C. § 1915(g).

Dated: June 11, 2008

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE