

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

DANIEL H. JONES #443638,)
Plaintiff,)
v.) NO. 1:18-cv-00087
CLAUDIA C. BONNYMAN, et) JUDGE CAMPBELL
al.,)
Defendants.)

ORDER

Plaintiff Daniel H. Jones, an inmate of the Turney Center Industrial Complex in Only, Tennessee, has filed a pro se complaint for alleged violation of his civil rights pursuant to 42 U.S.C. § 1983 (Doc. No. 1), along with an application to proceed in district court without prepaying fees and costs. (Doc. No. 2.)

The Prison Litigation Reform Act of 1995 (“PLRA”) was enacted to reduce the ability of prisoners to file frivolous lawsuits in federal court. *Skinner v. Switzer*, 562 U.S. 521, 535 (2011) (describing PLRA as imposing “constraints designed to prevent sportive filings in federal court”). One of the particular constraints in the PLRA serves to bar prisoners from bringing a civil action or appealing a judgment in a civil action in forma pauperis, that is, without prepaying the full filing fee,

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.

28 U.S.C. § 1915(g). In other words, a prisoner plaintiff who falls within the scope of § 1915(g) may not file a civil lawsuit in federal court without prepayment of the filing fee unless he is

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under imminent danger of serious physical injury. *Wilson v. Yaklich*, 148 F.3d 596, 603-04 (6th Cir. 1998).

In his Complaint, Plaintiff acknowledges having filed only one previous lawsuit in any state or federal court. (Doc. No. 1 at 1-2.) The Court takes judicial notice, however, of the fact that Plaintiff has filed numerous lawsuits in federal courts in Tennessee and Kentucky, at least four of which were dismissed for failure to state a claim upon which relief could be granted. *See, e.g.*, Judgment Order at 1, *Jones v. Goodwin*, No. 3:18-cv-457 (E.D. Tenn. Nov. 13, 2018) (“This pro se prisoner’s civil rights complaint is DISMISSED pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915(A) for failure to state a claim upon which relief may be granted[.]”); Memorandum Opinion and Order at 4, *Jones v. Commonwealth of Ky.*, No. 6:18-96 (E.D. Ky. May 30, 2018) (“For all of the foregoing reasons, Jones’s complaint fails to state a claim for which relief may be granted and will be dismissed.”); Order at 2, *Jones v. Gwyn*, No. 3:15-30 (M.D. Tenn. Jan. 20, 2015) (holding that “the complaint fails to state a claim upon which relief can be granted” and dismissing pursuant to Section 1915(e)(2)); Order of Judgment, *Jones v. Robert H. Montgomery, Jr.*, No. 2:11-cv-47 (E.D. Tenn. Nov. 30, 2011) (dismissing “for failure to state a claim and because defendants enjoy immunity” pursuant to Sections 1915(e)(2) and 1915A(b)). Accordingly, Plaintiff is subject to the limitation on in forma pauperis filings set forth in Section 1915(g).

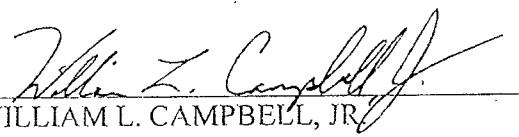
Plaintiff’s complaint does not allege any facts suggesting that he is currently in imminent danger of serious physical injury as required to satisfy Section 1915(g). Accordingly, Plaintiff is barred by 28 U.S.C. § 1915(g) from proceeding in this case in forma pauperis, and his application to do so (Doc. No. 2) is DENIED. Plaintiff is DIRECTED to remit the full \$400.00 filing fee within 30 days from the date of entry of this Order. Plaintiff is warned that failure to

remit the full \$400.00 filing fee within 30 days will result in dismissal of this action for failure to prosecute. In that event, the full amount of the filing fee will still be assessed against him and collected from his inmate trust account.

At the same time, Plaintiff **MUST** show cause why he should not be sanctioned for falsely indicating in his certified complaint that he has never filed any previous lawsuits in federal court. *See Hood v. Tompkins*, 197 F. App'x 818, 819 (11th Cir. 2006) (per curiam) (stating that "A district court may impose sanctions if a party knowingly files a pleading contained false contentions," and affirming dismissal of prisoner complaint for providing false information regarding prior filing history).

Finally, Plaintiff is also cautioned that if he fails to notify promptly the Court of any change in his address, this action may be dismissed for failure to prosecute and for failure to comply with the Court's Order.

It is so **ORDERED**.



WILLIAM L. CAMPBELL, JR.
UNITED STATES DISTRICT JUDGE

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COLUMBIA DIVISION

DANIEL H. JONES #443638,)
Plaintiff,)
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Defendants.

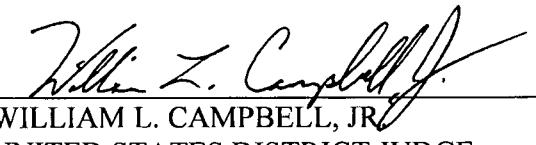
ORDER

Plaintiff has filed a motion asking the Court to reconsider its previous Order, which denied Plaintiff authorization to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(g) and ordered him to show cause why he should not be sanctioned for falsely indicating in his certified complaint that he had never filed any previous lawsuits in federal court. (Doc. Nos. 4, 5.) Nothing in Plaintiff's motion changes the fact that he is prohibited by Section 1915(g) from proceeding in forma pauperis in this case or that he did not acknowledge any of his previous federal litigation in his complaint. He suggests that this Court's previous dismissal of one of his federal lawsuits establishes knowledge of his litigation history and obviates any deception on that point. (Doc. No. 5 at 1.) But the Court's ability to ferret out judicially noticeable facts in some circumstances does not relieve a litigant of the consequences of dishonesty in his submissions to the Court. Accordingly, Plaintiff's motion to reconsider (Doc. No. 5) is **DENIED**.

The Court observes that Plaintiff concludes his motion by asking in the alternative that he "be allowed to appeal his matter to the U.S. Court of Appeals for the 6th Circuit." (Doc. No. 5 at 2.) If Plaintiff chooses to appeal the denial of his IFP motion, he is free to do so by filing a

notice of appeal. However, this Court would deem any such appeal to be frivolous and would deny leave to appeal in forma pauperis pursuant to both Sections 1915(a)(3) and 1915(g).

It is so **ORDERED**.



WILLIAM L. CAMPBELL, JR.
UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Aug 23, 2019
DEBORAH S. HUNT, Clerk

DANIEL H. JONES,)
v.)
Plaintiff-Appellant,)
)
CLAUDIA C. BONNYMAN, Part-I, Chancellor;)
CAROL L. MCCOY, Part-II, Chancellor; ELLEN)
HOBBS LYLE, Part -III, Chancellor; RUSSELL T.)
PERKINS, Part-IV, Chancellor; DAVIDSON)
COUNTY CHANCERY COURT TWENTIETH)
JUDICIAL DISTRICT; JIM PURVIANCE,)
Executive Director; RICHARD MONTGOMERY,)
Chair,)
Defendants-Appellees.)

OR D E R

Daniel H. Jones, a pro se Tennessee prisoner, appeals the order of the district court denying his motion to proceed in forma pauperis in connection with his complaint alleging civil rights violations pursuant to 42 U.S.C. § 1983. Jones has filed a motion to proceed in forma pauperis on appeal. *See* Fed. R. App. P. 24(a)(5).

Jones's complaint alleged that members of the Tennessee Board of Parole and Chancellors of the Davidson County, Tennessee, Chancery Court violated his civil rights in connection with a parole hearing and an appeal of the Board's decision to defer a decision on Jones's parole for five years. With his complaint, Jones filed an application to proceed in forma pauperis. As required by the Prison Litigation Reform Act ("PLRA"), the district court screened the complaint. *See* 28 U.S.C. § 1915(g). Although Jones claimed to have filed only one previous lawsuit in any court,

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the district court took judicial notice of the fact that Jones had filed several lawsuits in federal district courts and that at least four of them were dismissed as frivolous or for failure to state a claim. Because Jones's current complaint also did not demonstrate that he was in imminent danger, the district court denied Jones's motion to proceed in forma pauperis. The court ordered Jones to pay the filing fee within thirty days of the court's order or his action would be dismissed for failure to prosecute. Jones did not pay the filing fee but filed a motion asking the court to reconsider its decision. The district court denied the motion and concluded that an appeal could not be taken in good faith.

Pursuant to the PLRA, a prisoner may not bring a civil action or appeal in forma pauperis

if the prisoner has, on 3 or more prior occasions . . . brought an action . . . 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.

28 U.S.C. § 1915(g). As cited by the district court, Jones has had at least four cases dismissed as frivolous or for failure to state a claim for relief. Nor does Jones fall within the exception to the three strikes rule because his allegations do not demonstrate that he is in imminent danger of serious physical injury. Accordingly, the district court did not abuse its discretion by denying Jones pauper status.

Jones's motion to proceed in forma pauperis is **DENIED**. Unless Jones pays the \$505 filing fee to the district court within thirty days of the entry of this order, this appeal will be dismissed for want of prosecution.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Aug 27, 2019

DEBORAH S. HUNT, Clerk

DANIEL H. JONES,
)
Plaintiff-Appellant,
)
v.
)
CLAUDIA C. BONNYMAN, Part-I, Chancellor;
CAROL L. MCCOY, Part-II, Chancellor; ELLEN
HOBBS LYLE, Part -III, Chancellor; RUSSELL T.
PERKINS, Part-IV, Chancellor; DAVIDSON
COUNTY CHANCERY COURT TWENTIETH
JUDICIAL DISTRICT; JIM PURVIANCE,
Executive Director; RICHARD MONTGOMERY,
Chair,
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ORDER

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28 U.S.C. § 1915(g). As cited by the district court, Jones has had at least four cases dismissed as frivolous or for failure to state a claim for relief. Jones does not fall within the exception to the three strikes rule because his allegations do not demonstrate that he is in imminent danger of serious physical injury. Accordingly, the district court did not abuse its discretion by denying Jones pauper status.

Jones's motion to proceed in forma pauperis is **DENIED**. Unless Jones pays the \$505 filing fee to the district court within thirty days of the entry of this order, this appeal will be dismissed for want of prosecution.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

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