

APPENDIX A**UNPUBLISHED****UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 19-6206

JACQUES PAUL VILLAFANA,

Plaintiff - Appellant,

v.

HENRY THOMAS PADRICK, JR.,

Defendant - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Roderick Charles Young, Magistrate Judge. (3:18-cv-00890-REP-RCY)

Submitted: June 20, 2019

Decided: June 25, 2019

Before NIEMEYER, AGEE, and RICHARDSON, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Jacques Paul Villafana, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

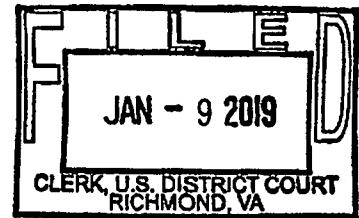
PER CURIAM:

Jacques Paul Villafana seeks to appeal the district court's order docketing his complaint on the condition that Villafana either prepay the filing fee or comply with procedures to proceed in forma pauperis. This court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291 (2012), and certain interlocutory and collateral orders, 28 U.S.C. § 1292 (2012); Fed. R. Civ. P. 54(b); *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 545-46 (1949). The order Villafana seeks to appeal is neither a final order nor an appealable interlocutory or collateral order. Accordingly, we deny leave to proceed in forma pauperis, deny Villafana's motion to stay, and dismiss the appeal for lack of jurisdiction. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

APPENDIX B

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**



JACQUES PAUL VILLAFANA,

Plaintiff,

v.

Civil Action No. 3:18CV890

H. THOMAS PADRICK, JR.,

Defendant.

**MEMORANDUM ORDER
(Conditionally Docketing Action)**

Plaintiff, a Virginia inmate, has submitted this civil action. He also has applied to proceed *in forma pauperis*. It is ORDERED that:

1. This action is CONDITIONALLY docketed.
2. Within thirty (30) days from the date of entry hereof, Plaintiff must submit a statement under oath or under penalty of perjury that:

- (A) Identifies the nature of the action;
- (B) States his belief that he is entitled to relief;
- (C) Avers that he is unable to prepay fees or give security therefor; and,
- (D) Includes a statement of the assets he possesses.

The Court is forwarding to Plaintiff an affidavit for compliance with the above procedures. Failure to complete the affidavit in its entirety will result in summary dismissal of the action.

3. The Clerk shall obtain a certified copy of Plaintiff's trust fund account for the six (6) month period immediately preceding the initiation of this action.
4. Plaintiff must affirm his intention to pay the entire \$350.00 filing fee. Accordingly, he is required to read, sign, and return to the Court the enclosed consent to collection of fees form within thirty (30) days of the date of entry hereof.

5. Failure to comply strictly with any of the above time requirements will result in summary dismissal of the action. *See Fed. R. Civ. P. 41(b).*

6. Plaintiff need not comply with paragraphs 1 through 5 if he submits the full \$350.00 filing fee, a \$50.00 administrative fee, and withdraws his request to proceed *in forma pauperis* within thirty (30) days of the date of entry hereof.

7. Plaintiff is prohibited from filing any other pleadings, motions, memoranda, or material not specifically required herein or otherwise specifically ordered by the Court until he is granted leave to proceed *in forma pauperis* or pays the full filing fee. Any documents submitted in violation of this paragraph will not be considered.

8. The Court DOES NOT ACCEPT documents or pleadings submitted on paper that exceeds 8½ inches by 11 inches in size, or that contains writing on the reverse side of a page.

**ANY SUBMISSION MADE IN VIOLATION OF THIS PARAGRAPH WILL NOT BE
CONSIDERED BY THE COURT.**

9. Plaintiff must immediately advise the Court of his new address in the event that he is transferred, released, or otherwise relocated while the action is pending. **FAILURE TO DO
SO WILL RESULT IN DISMISSAL OF THE ACTION.**

10. All correspondence for the Court shall be directed to: Spottswood W. Robinson III and Robert R. Merhige, Jr., Federal Courthouse, 701 East Broad Street, Richmond, VA 23219.

The Clerk is DIRECTED to send a copy of this Memorandum Order to Plaintiff.

It is so ORDERED.

/s/ 
Roderick C. Young
United States Magistrate Judge

Date: January 7, 2019
Richmond, Virginia

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

JACQUES PAUL VILLAFANA,

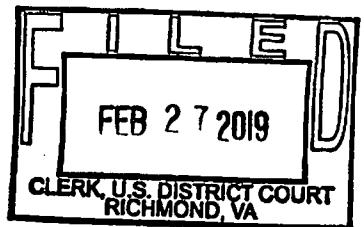
Plaintiff,

v.

Civil Action No. 3:18CV890

H. THOMAS PADRICK, JR.,

Defendant.



MEMORANDUM OPINION

By Memorandum Order entered on January 9, 2019, the Court conditionally docketed the action. At that time, the Court directed Jacques Paul Villafana to affirm his intention to pay the full filing fee by signing and returning a consent to the collection of fees form. The Court warned Villafana that a failure to comply with the above directive within thirty (30) days of the date of entry thereof would result in summary dismissal of the action.

Instead of filing the consent to collection of fees form, Villafana filed a Motion to Stay Dismissal of Action (ECF No. 4) and a Notice of Appeal (ECF No. 5). Villafana seemingly contests the collection of the fee and contends that "the reason for his appeal is that his § 1983 is criminal[,] not civil, in nature, and not governed under the Prison Litigation Reform Act (PLRA). Wherefore, Villafana prays that this Court grant his Motion to

Stay the Dismissal of his action, pending the conclusion of his appeal." (Mot. Stay 1 (emphasis omitted).)

Villafana attacks a state court ruling by Judge H. Thomas Padrick, Jr. pertaining to his criminal case and Villafana's alleged innocence and seeks a permanent injunction from this Court requiring Padrick to "grant a hearing . . . for scientific analysis for the bloodstain/blood-splatter analysis." (Compl. 4, ECF No. 1.) Villafana indicates that Padrick violated his Fourteenth Amendment right to due process, a claim that is civil in nature, and must be brought pursuant to 42 U.S.C. § 1983. (Id. at 3.) Villafana fails to identify any statute that would permit him to litigate this action without paying the \$ 350 fee. Moreover, Villafana's action is not brought pursuant to the habeas statute, thus, Villafana was required to complete and return a consent to collection of fees form and is responsible for the entire \$350 fee in order to litigate this action. See 28 U.S.C. § 1914(a) (emphasis added) ("The clerk of each district court shall require the parties instituting any civil action, suit or proceeding in such court . . . to pay a filing fee of \$350, except on application of a writ of habeas corpus the filing fee shall be \$5.").

Villafana has not complied with the order of this Court because he failed to return the consent to collection of fees form. As a result, he does not qualify for in forma pauperis status. Furthermore, he has not paid the statutory filing fee for the

instant action. See 28 U.S.C. § 1914(a). Such conduct demonstrates a willful failure to prosecute. See Fed. R. Civ. P. 41(b). Villafana's Motion to Stay Dismissal of Action (ECF No. 4) will be denied and the action will be dismissed without prejudice.

The Clerk is directed to send a copy of the Memorandum Opinion to Villafana.

/s/

REP

Robert E. Payne
Senior United States District Judge

Date: *February 26, 2019*
Richmond, Virginia

APPENDIX C

FILED: August 13, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-6206
(3:18-cv-00890-REP-RCY)

JACQUES PAUL VILLAFANA

Plaintiff - Appellant

v.

HENRY THOMAS PADRICK, JR.

Defendant - Appellee

O R D E R

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk

APPENDIX D

28 U.S.C. 1291. Final decisions of district courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title [28 USCS §§ 1292fc and 1295].