

APPENDIX

A

15-40750

Mr. John Patrick Wallace
#1621931
CID Robertson Prison
12071 FM 3522
Abilene, TX 79601-0000

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

April 15, 2016

Mr. David O'Toole
U.S. District Court, Eastern District of Texas
211 W. Ferguson Street
Room 106
Tyler, TX 75702

INFO COPY

No. 15-40750 John Wallace v. John Rupert, et al
USDC No. 6:15-CV-53

Dear Mr. O'Toole,

Enclosed is a copy of the judgment issued as the mandate and a copy of the court's opinion.

Sincerely,

LYLE W. CAYCE, Clerk

Christina Gardner

By: _____
Christina A. Gardner, Deputy Clerk
504-310-7684

cc: (letter only)
Mr. John Patrick Wallace

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 15-40750

D.C. Docket No. 6:15-CV-53

United States Court of Appeals
Fifth Circuit

FILED

March 24, 2016

Lyle W. Cayce
Clerk

JOHN PATRICK WALLACE,

Plaintiff - Appellant

v.

JOHN A. RUPERT; JOHN WISENER; L. DOTLES; EDWIN ATCHISON; M.
FELLNIS,

Defendants - Appellees

Appeal from the United States District Court for the
Eastern District of Texas, Tyler

Before HIGGINBOTHAM, SMITH, and OWEN, Circuit Judges.

J U D G M E N T

This cause was considered on the record on appeal.

It is ordered and adjudged that the appeal is dismissed as frivolous.



Certified as a true copy and issued
as the mandate on Apr 15, 2016

Attest:

Lyle W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

APPENDIX

B

John Wallace #1621931
TDCJ Montford Unit
8602 Peach Street
Lubbock, TX 79404-7777

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
FILED

2017 FEB 14 AM 10:48

DEPUTY CLERK

JOHN WALLACE,
Institutional ID No. 1621931,
SID No. 4815496,
Previous TDCJ No. 1367269,

Plaintiff,

V.

ROBERT VILLAPONDO,
Captain of Corrections, *et al.*,

Defendants.

CIVIL ACTION NO.
5:15-CV-168-BQ
ECF

ORDER

Now before the court is a document entitled "Motion for Rule 60(b)" filed by *pro se* Plaintiff John Wallace. ECF No. 43. Through the motion, Wallace requests that the court reverse its order and accompanying judgment dismissing this 42 U.S.C. § 1983 action as frivolous (entered February 25, 2016), and remand the case "to continue piecemeal litigation" in accordance with Rule 60(b)(6) of the Federal Rules of Civil Procedure. The court has considered Wallace's motion and the applicable law and is of the opinion that the motion should be denied.

Rule 60(b) of the Federal Rules of Civil Procedure provides six enumerated grounds for relief from a final judgment. *See* Fed. R. Civ. P. 60(b) (2016). Rule 60(b)(6) is a catch-all provision allowing for equitable relief "from a final judgment" for "any other reason that justifies relief." Wallace asserts that he is entitled to relief under Rule 60(b)(6) because the court applied "erroneous findings and conclusions of law," and he will continue to suffer an undue hardship if the judgment is not reversed. He also claims that reversal of the judgment is necessary to accomplish justice.

Other than his conclusory allegations that the court erred by applying erroneous findings and conclusions of law, Wallace provides no specific facts to explain his contention. “A motion filed pursuant to Rule 60(b)(6) requires a showing of ‘extraordinary circumstances.’” *Munoz v. Fortner*, 308 F. App’x 816, 818 (5th Cir. 2009) (quoting *Hess v. Cockrell*, 281 F.3d 212, 216 (5th Cir. 2002)); see *Steverson v. GlobalSantaFe Corp.*, 508 F.3d 300, 303 (5th Cir. 2007) (quoting *Stipelcovich v. Sand Dollar Marine, Inc.*, 805 F.2d 599, 604–05 (5th Cir. 1986)) (“Clause (6) is a residual clause used to cover unforeseen contingencies; that is, it is a means for accomplishing justice in exceptional circumstances.”). Wallace has not alleged, much less argued, any facts demonstrating the existence of exceptional circumstances that would warrant the court providing relief in this case.¹

Wallace has made numerous attempts to appeal or obtain reconsideration of the court’s order and accompanying judgment dismissing his § 1983 action as frivolous. See ECF No. 22 (Motion to Alter or Amend Judgment); ECF No. 31 (Notice of Appeal to the Fifth Circuit as to Order Dismissing Case as Frivolous and Judgment); ECF No. 36 (Motion to Reinstate Appeal); ECF No. 41 (Motion for Reconsideration Regarding Order Denying Motion to Reinstate Appeal). The court notes that Wallace consented to proceed before a magistrate judge in this case. ECF No. 10. Thus, any appeal of the court’s dismissal of this § 1983 action was to the Court of Appeals for the Fifth Circuit, in accordance with 28 U.S.C. § 636(c)(3). Wallace filed a notice of appeal to the Fifth Circuit on May 5, 2016; however, this court denied Wallace’s motion for leave to proceed *in forma pauperis* on appeal because Wallace had accumulated “three strikes” in accordance with 28 U.S.C.

¹Wallace argues that he is entitled to relief under Rule 60(b)(6) to “correct a manifest error of law.” This is not the appropriate standard for relief under Rule 60(b). Rather, this is the standard used to evaluate a motion to alter or amend judgment under Rule 59(e). See Fed. R. Civ. P. 59(e); *Temple v. HydroChem Inc.*, 367 F.3d 473, 478–79 (5th Cir. 2004). Wallace previously filed a Rule 59(e) motion, but subsequently withdrew it. See ECF Nos. 22, 30, 32.

§ 1915(g). ECF No. 35. The Fifth Circuit dismissed Wallace's appeal on August 3, 2016, because he failed to timely pay the docketing fee. *See* ECF No. 38.

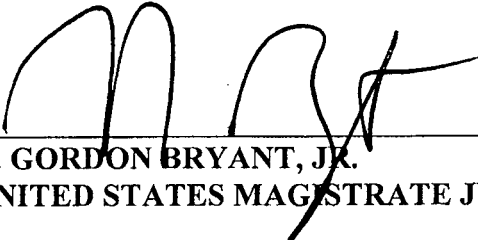
Wallace now seemingly attempts to obtain another opportunity to appeal the court's judgment. *See* ECF No. 43 (addressing the motion "To the Honorable District Judge" and requesting reversal of the magistrate's judgment). A Rule 60(b) motion, however, should not be used as "a substitute for an appeal." *Hall v. Cain*, No. 11-30592, 2011 WL 6259764, at *1 (5th Cir. Dec. 15, 2011) (citing *Hess*, 281 F.3d at 216).

For all of the above reasons, Wallace has not shown how granting his motion under Rule 60(b)(6) would accomplish justice in exceptional circumstances. *See Steverson*, 508 F.3d at 303. Accordingly, Wallace's motion is **DENIED**.

Wallace is reminded that frivolous filings by prisoners consume inordinate amounts of scarce judicial resources, and may result in the delay of the court hearing valid complaints. *See Holloway v. Hornsby*, 23 F.3d 944, 946 (5th Cir. 1994). Filings like the instant motion may be construed as frivolous, and Wallace is cautioned that if he continues to file frivolous motions in this case, sanctions may be imposed against him. Such sanctions may include monetary sanctions or a complete bar to filing pleadings without leave of the court.

SO ORDERED.

Dated: February 14, 2017



D. GORDON BRYANT, JR.
UNITED STATES MAGISTRATE JUDGE

CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

2017 MAR -6 PM 4:35

DEPUTY CLERK CPK

JOHN WALLACE,
Institutional ID No. 1621931,
SID No. 4815496,
Previous TDCJ No. 1367269,

Plaintiff,

v.

ROBERT VILLAPONDO,
Captain of Corrections, *et al.*,

Defendants.

CIVIL ACTION NO.
5:15-CV-168-BQ
ECF

ORDER

On February 25, 2016, the court entered an Order of Dismissal and Final Judgment in this action. ECF Nos. 20, 21. Plaintiff John Wallace subsequently filed a "Motion to Alter or Amend Judgment" in accordance with Rule 59(e) of the Federal Rules of Civil Procedure (ECF No. 22), but prior to the court ruling on the motion, Wallace moved to withdraw the motion, which the court granted. ECF No. 32. On May 5, 2016, Wallace filed a notice of appeal in the Court of Appeals for the Fifth Circuit appealing this court's order dismissing the action as frivolous. ECF No. 31. The Fifth Circuit dismissed his appeal for failure to timely pay the docketing fee.¹ On February 6, 2017, Wallace filed a "Motion for Rule 60(b)," in which he requested that the court reverse its

¹ Wallace filed a motion for leave to proceed *in forma pauperis* (IFP) on appeal to the Fifth Circuit. ECF No. 33. This court denied Wallace's motion for leave to proceed IFP under the "three strikes" rule of 28 U.S.C. § 1915(g). ECF No. 35. Wallace thereafter filed a motion requesting that the court reconsider its denial of his motion for leave to proceed IFP (ECF No. 36), which the court denied on August 8, 2016. ECF No. 39. Wallace then filed a second motion for reconsideration (ECF No. 41), which the court denied on August 30, 2016. ECF No. 42. In the court's August 30, 2016, order, Wallace was warned that the filing of any further frivolous motions in this case could result in the imposition of sanctions, including monetary sanctions or a complete bar to filing pleadings without leave of the court. *Id.* at 1-2.

order and accompanying judgment dismissing this § 1983 action. ECF No. 43. The court denied Wallace's motion on February 14, 2017, and again warned Wallace that the filing of any further frivolous motions in this case could result in the imposition of sanctions. ECF No. 44. Nevertheless, on March 2, 2017—more than one year after the court entered its order and judgment dismissing this § 1983 action as frivolous—Wallace filed yet another motion, which is now before the court, again requesting that the court vacate its judgment dismissing this case. ECF No. 45. The motion is untimely on its face, and identifies no legitimate ground or basis for relief under Rule 60(b). For reasons the court has previously set forth, the motion is hereby **DENIED**.

In addition, the court is of the opinion that sanctions are appropriate to deter Wallace's continued filing of frivolous motions.² See *Vinson v. Tex. Bd. of Corrs.*, 901 F.2d 474, 475 (5th Cir. 1990) (affirming district court's imposition of sanctions on a *pro se* prisoner who abused the right to proceed IFP). Frivolous filings by prisoners consume inordinate amounts of scarce judicial resources and often result in the delay of the court hearing valid complaints. See *Holloway v. Hornsby*, 23 F.3d 944, 946 (5th Cir. 1994).

It is, therefore, **ORDERED**:

(1) Wallace's "Motion to Vacate Judgement" (ECF No. 45) is **DENIED**.

(2) **A monetary sanction in the amount of \$25.00 is assessed against Wallace.** The agency having custody over Wallace shall place a hold on Wallace's inmate trust account and shall pay the sanction when funds are available.

² The court notes that Wallace filed a prior § 1983 action alleging claims similar to the ones alleged in this action. See *Wallace v. Mark Roth et al.*, 5:15-CV-105 (Apr. 6, 2015). This court dismissed that action as frivolous on October 13, 2015. ECF Nos. 32, 33. Wallace filed a motion for reconsideration (ECF No. 34), which the court denied on April 14, 2016. ECF No. 44. Wallace then filed a notice of appeal to the Fifth Circuit (ECF No. 45); his appeal was dismissed on August 26, 2016, for failure to timely pay the filing fee. ECF No. 52. Thus, the court is very familiar with Wallace, his claims, and his numerous filings.

Wallace shall immediately execute all consents and other documents required by the agency having custody of Wallace to authorize the necessary withdrawals from Wallace's inmate trust account.

(3) Wallace is prohibited from filing any new civil rights complaints until the sanction imposed has been paid in full.

(4) **Wallace is barred from filing any further motions, pleadings, or other documents in this civil action, except for a notice of appeal, which must be accompanied by the appellate filing fee.** Any further motions, pleadings, or other documents submitted by Wallace for filing in this civil action will not be filed by the Clerk, will not be considered by the court, and will not be returned to Wallace.

A copy of this order shall be mailed to the inmate accounting office or other person(s) or entity with responsibility for assessing, collecting, and remitting to the court sanction payments on behalf of inmates, as designated by the facility in which Wallace is confined.

SO ORDERED.

Dated: March 6, 2017



D. GORDON BRYANT, JR.
UNITED STATES MAGISTRATE JUDGE

ATTN,BARRED,CLOSED,FEEDUE,IFP,JURY

U.S. District Court
Northern District of Texas (Lubbock)
CIVIL DOCKET FOR CASE #: 5:15-cv-00168-BQ

Wallace v. Villapondo et al
Assigned to: Magistrate Judge D. Gordon Bryant, Jr
Case in other court: USCA Fifth Circuit, 16-10569
Cause: 42:1983 Prisoner Civil Rights

Date Filed: 07/17/2015
Date Terminated: 02/25/2016
Jury Demand: Plaintiff
Nature of Suit: 550 Prisoner Pet/Other:
Civil Rights
Jurisdiction: Federal Question

Plaintiff**John Wallace**represented by **John Wallace**

1621931
TDCJ Polunsky Unit
3872 FM 350 South
Livingston, TX 77351
PRO SE

V.

Defendant

Robert Villapondo
Captain of Corrections

Defendant

NFN Modrano
Sargeant of Corrections

Defendant

Marilyn Nobles
Psychiatric Provider

Defendant

George Allen
R.M.F. Admin. Coordinator

Defendant

Patricia Aristamando
Medical Director

Defendant

Scott Bergfeld
Medical Doctor

Defendant

Ohore Cecilia
Medical Provider

Defendant

Chris Trevino
Physical Therapist

Date Filed	#	Docket Text
07/17/2015	<u>1</u>	COMPLAINT WITH JURY DEMAND against All Defendants filed by John Wallace. Unless exempted, attorneys who are not admitted to practice in the Northern District of Texas must seek admission promptly. Forms, instructions, and exemption information may be found at www.txnd.uscourts.gov , or by clicking here: Attorney Information - Bar Membership . If admission requirements are not satisfied within 21 days, the clerk will notify the presiding judge. (apb) (Entered: 07/17/2015)
07/17/2015	<u>2</u>	New Case Notes: A filing fee has not been paid. Pursuant to Misc. Order 6, Plaintiff is provided the Notice of Right to Consent to Proceed Before A U.S. Magistrate Judge. Clerk to provide copy to plaintiff if not received electronically. (apb) (Entered: 07/17/2015)
07/17/2015	<u>3</u>	Notice and Instruction to Pro Se Party (apb) (Entered: 07/17/2015)
07/17/2015	<u>4</u>	Declaration in Support filed by John Wallace re: <u>1</u> Complaint. (apb) (Entered: 07/17/2015)
07/17/2015	<u>5</u>	MOTION for Leave to Proceed in forma pauperis with certificate of trust account filed by John Wallace (apb) (Entered: 07/17/2015)
07/17/2015		MOTION to Appoint Counsel see document <u>1</u> for image; MOTION for Spears Hearing Request, Orthopedic Specialist Request, and Psychiatric Representative Request see document <u>1</u> for image, filed by John Wallace. (apb) (Entered: 07/17/2015)
07/17/2015		***Clerk's Notice of delivery: (see NEF for details) Docket No:2,3. Returned copy of filings to Plaintiff Fri Jul 17 14:14:36 CDT 2015 (crt) (Entered: 07/17/2015)
08/19/2015	<u>6</u>	PLRA FILING FEE ORDER: for Collection and Payment of Full Filing Fee. John Wallace #1621931 shall pay \$350 in monthly installments as mandated by the PLRA. (Clerk note: TDCJ Inmate Trust Office has been electronically notified of this order.) Plaintiff is granted leave to proceed in forma pauperis. (Ordered by Judge Sam R Cummings on 8/19/2015) (apb) (Entered: 08/19/2015)

		08/19/2015)
08/19/2015		***Clerk's Notice of delivery: (see NEF for details) Docket No:6. Wed Aug 19 13:22:05 CDT 2015 (crt) (Entered: 08/19/2015)
08/28/2015	<u>7</u>	ORDER: Case transferred to Magistrate Judge Nancy M Koenig for all further proceedings. This case shall hereafter be numbered Civil Action No. 5:15-CV-00168-BG. Judge Sam R Cummings no longer assigned to case. (Ordered by Judge Sam R Cummings on 8/28/2015) (apb) (Entered: 08/28/2015)
08/28/2015		***Clerk's Notice of delivery: (see NEF for details) Docket No:7. Fri Aug 28 10:49:49 CDT 2015 (crt) (Entered: 08/28/2015)
09/15/2015	<u>8</u>	Notice of Availability of Magistrate Judge to Exercise Jurisdiction. If Plaintiff wishes to consent, Plaintiff must sign and date the attached consent form and return the completed form to the Clerk within 30 days from receipt of this notice. The Clerk shall mail this notice, Miscellaneous Order No. 14, and the attached consent form to Plaintiff (Ordered by Magistrate Judge Nancy M Koenig on 9/15/2015) (apb) (Entered: 09/15/2015)
09/15/2015		***Clerk's Notice of delivery: (see NEF for details) Docket No:8. Also mailed Misc. Oder No. 14 Tue Sep 15 11:44:20 CDT 2015 (crt) (Entered: 09/15/2015)
09/22/2015	<u>9</u>	MOTION To Schedule Immediate Hearing filed by John Wallace (cb) (Entered: 09/22/2015)
09/22/2015	<u>10</u>	Prisoner Consent by John Wallace to Trial by Magistrate Judge. (cb) (Entered: 09/22/2015)
09/28/2015	<u>11</u>	MOTION to Schedule Immediate Hearing filed by John Wallace (bdg) (Entered: 09/28/2015)
11/04/2015	<u>12</u>	Order to Complete Questionnaire sent to John Wallace. It is ordered that Wallace shall complete the attached Questionnaire and Declaration and return it to the United States District Clerk within thirty (30) days from the date of this order. (Ordered by Magistrate Judge Nancy M Koenig on 11/4/2015) (bdg) (Entered: 11/04/2015)
11/04/2015		***Clerk's Notice of delivery: (see NEF for details) Docket No:12. Wed Nov 4 12:23:48 CST 2015 (crt) (Entered: 11/04/2015)
11/12/2015	<u>13</u>	NOTICE of Change of Address for Pro Se litigant John Wallace. New address: John Wallace #1621931, Robertson Unit, 12071 FM 3522, Abilene, TX 79601. (apb) (Entered: 11/12/2015)
12/07/2015	<u>14</u>	MOTION to Extend Time filed by John Wallace (cb) (Entered: 12/07/2015)
12/09/2015	<u>15</u>	ORDER granting <u>14</u> Motion to Extend Time to file responses to court's questionnaire. Wallace shall submit answers to the questionnaire by 12/31/2015. (Ordered by Magistrate Judge Nancy M Koenig on 12/9/2015) (bdg) (Entered: 12/09/2015)

12/09/2015		***Clerk's Notice of delivery: (see NEF for details) Docket No:15. Wed Dec 9 14:14:37 CST 2015 (crt) (Entered: 12/09/2015)
01/06/2016	<u>16</u>	RESPONSE - Questionnaire and Declaration filed by John Patrick Wallace re: <u>12</u> Judge's Questionnaire - Order. (bdg) (Entered: 01/06/2016)
01/06/2016	<u>17</u>	AFFIDAVIT in support of <u>16</u> Quesitonnaire and Declaration by John Patrick Wallace. (bdg) (Entered: 01/06/2016)
01/11/2016	<u>18</u>	Supplemental Document by John Patrick Wallace as to <u>16</u> Response-Questionnaire. (bdg) (Entered: 01/11/2016)
02/16/2016	<u>19</u>	NOTICE of Change of Address for Pro Se litigant John Wallace. New address: Montford Unit, 8602 Peach Street, Lubbock, Texas 79404. (bdg) Modified text on 5/10/2016 (bdg). (Entered: 02/17/2016)
02/25/2016	<u>20</u>	ORDER OF DISMISSAL: It is, therefore, ORDERED that Wallace's Complaint is dismissed with prejudice pursuant to 28 U.S.C. §§ 1915 and 1915A. Dismissal of this action does not release Wallace or the institution where he is incarcerated from the obligation to pay the filing fee previously imposed. This dismissal shall count as a qualifying dismissal under 28 U.S.C. § 1915(g) and Adepegba v. Hammons, 103 F.3d 383 (5th Cir. 1996). Any pending motions are denied as moot. Any appeal shall be to the Court of Appeals for the Fifth Circuit in accordance with 28 U.S.C. § 636(c)(3). Judgment shall be entered accordingly. (Ordered by Magistrate Judge Nancy M Koenig on 2/25/2016) (lkw) (Entered: 02/25/2016)
02/25/2016	<u>21</u>	JUDGMENT: Of equal date herewith an Order of Dismissal having been entered, it is ORDERED and ADJUDGED that Plaintiff's Complaint and all claims alleged therein are DISMISSED with prejudice. (Ordered by Magistrate Judge Nancy M Koenig on 2/25/2016) (lkw) (Entered: 02/25/2016)
02/25/2016		***Clerk's Notice of delivery: (see NEF for details) Docket No:20,21. Thu Feb 25 16:20:35 CST 2016 (crt) (Entered: 02/25/2016)
03/23/2016	<u>22</u>	MOTION to Alter or Amend Judgment filed by John Wallace (bdg) Modified text on 5/10/2016 (bdg). (Entered: 03/23/2016)
03/23/2016	<u>23</u>	MOTION for Production of State's Records filed by John Wallace (bdg) Modified text on 5/10/2016 (bdg). (Entered: 03/23/2016)
03/23/2016	<u>24</u>	MOTION for Production of Clerk's Records filed by John Wallace (bdg) Modified text on 5/10/2016 (bdg). (Entered: 03/23/2016)
03/23/2016	<u>25</u>	MOTION to Extend Time to Submit a Motion to Alter or Amend Judgement filed by John Wallace (bdg) Modified text on 5/10/2016 (bdg). (Entered: 03/23/2016)
04/14/2016	<u>26</u>	ORDER granting <u>24</u> Motion to Production of Clerk's Records. The Clerk of Court shall provide Wallace with copies of his responses to the questionnaire(ECF No. 16) and the document entitled "Declaration in Support"

		(ECF No. 4). To the extent Wallace wishes to receive a copy of other documents that were docketed in this case, he may request from the Clerk of Court copies of the documents, which the Clerk may provide at the standard fee for copies. (Ordered by Magistrate Judge Nancy M Koenig on 4/14/2016) (bdg) (Entered: 04/14/2016)
04/14/2016		***Clerk's Notice of delivery: (see NEF for details) Docket No:26. Also mailed copies of Doc No. 4 and 16 Thu Apr 14 09:52:08 CDT 2016 (crt) (Entered: 04/14/2016)
04/14/2016	<u>27</u>	ORDER granting <u>25</u> Motion to Extend Time. To the extent Wallace seeks an extension of time to file a brief regarding his Rule 59(e) motion to alter or amend judgment, such request is GRANTED. Wallace is permitted thirty (30) days in which to file a brief with the court that explains the basis of his Rule 59(e) motion. (Ordered by Magistrate Judge Nancy M Koenig on 4/14/2016) (bdg) (Entered: 04/14/2016)
04/14/2016	<u>28</u>	ORDER: Wallace is ORDERED to file with the court a brief that explains the basis of his motion to alter or amend within thirty (30) days from the date of this order. Wallace is advised that he need not provide legal argument nor should he merely rehash the facts he asserted in his original Complaint. Wallace is further advised that because he timely filed his Rule 59(e) motion, the time to file an appeal shall begin after the court receives the information required in this order and rules on the motion. (Ordered by Magistrate Judge Nancy M Koenig on 4/14/2016) (bdg) (Entered: 04/14/2016)
04/14/2016	<u>29</u>	ORDER granting in part and denying in part <u>23</u> Motion for Production of State's Records. To the extent Wallace wishes to receive a copy of his 42 U.S.C. 1983 complaint and the document entitled "Supplemental Document" (ECF No. 18), such request is GRANTED. The Clerk of Court shall provide copies of these two documents to Wallace. Wallace's motion is DENIED with respect to his request for medical records from TDCJ and any other relief. (Ordered by Magistrate Judge Nancy M Koenig on 4/14/2016) (bdg) (Entered: 04/14/2016)
04/14/2016		***Clerk's Notice of delivery: (see NEF for details) Docket No:27,28,29. Also mailed copies of Doc No. 1 and 18 Thu Apr 14 10:17:12 CDT 2016 (crt) (Entered: 04/14/2016)
05/05/2016	<u>30</u>	MOTION to Withdraw <u>22</u> MOTION to Alter Judgment filed by John Wallace (bdg) Modified text on 5/10/2016 (bdg). (Entered: 05/05/2016)
05/05/2016	<u>31</u>	NOTICE OF APPEAL as to <u>20</u> Order Dismissing Case as Frivolous; <u>21</u> Judgment to the Fifth Circuit by John Wallace. T.O. form to appellant electronically at <u>Transcript Order Form</u> or US Mail as appropriate. Copy of NOA to be sent US Mail to parties not electronically noticed. IMPORTANT ACTION REQUIRED: Provide an electronic copy of any exhibit you offered during a hearing or trial that was admitted into evidence to the clerk of the district court within 14 days of the date of this notice. Copies must be transmitted as PDF attachments through ECF by all ECF Users or delivered to

		the clerk on a CD by all non-ECF Users. See detailed instructions here . (Exception: This requirement does not apply to a pro se prisoner litigant.) Please note that if original exhibits are in your possession, you must maintain them through final disposition of the case. (bdg) Modified text on 5/10/2016 (bdg). (Entered: 05/05/2016)
05/05/2016		***Clerk's Notice of delivery: (see NEF for details) Docket No:31. Thu May 5 12:27:19 CDT 2016 (crt) (Entered: 05/05/2016)
05/13/2016	<u>32</u>	ORDER granting <u>30</u> Motion to Withdraw ; withdrawing <u>22</u> Motion to Alter or Amend Judgment. (Ordered by Magistrate Judge Nancy M Koenig on 5/13/2016) (bdg) (Entered: 05/13/2016)
05/13/2016		***Clerk's Notice of delivery: (see NEF for details) Docket No:32. Fri May 13 13:51:58 CDT 2016 (crt) (Entered: 05/13/2016)
05/17/2016		USCA Case Number 16-10569 in USCA Fifth Circuit for <u>31</u> Notice of Appeal filed by John Wallace. (bdg) (Entered: 05/17/2016)
06/06/2016	<u>33</u>	MOTION for Leave to Proceed in forma pauperis on appeal re <u>31</u> Notice of Appeal filed by John Wallace. (bdg) (Entered: 06/06/2016)
06/09/2016	<u>34</u>	Certificate of Trust Account by John Wallace TDCJ # 01621931. (bdg) (Entered: 06/09/2016)
06/16/2016	<u>35</u>	ORDER denying <u>33</u> Motion for Leave to Proceed In Forma Pauperis. The applicant is barred from proceeding in forma pauperis on appeal because of the "three strikes" rules of 28 U.S.C. 1915(g). (Ordered by Magistrate Judge Nancy M Koenig on 6/16/2016) (bdg) (Entered: 06/16/2016)
06/16/2016		***Clerk's Notice of delivery: (see NEF for details) Docket No:35. Thu Jun 16 12:05:21 CDT 2016 (crt) (Entered: 06/16/2016)
07/27/2016	<u>36</u>	MOTION to Reinstate Appeal filed by John Wallace (bdg) (Entered: 07/27/2016)
07/27/2016	<u>37</u>	AFFIDAVIT in Support of <u>36</u> MOTION to Reinstate Appeal by John Wallace. (bdg) (Entered: 07/27/2016)
08/03/2016	<u>38</u>	JUDGMENT/MANDATE of USCA as to <u>31</u> Notice of Appeal filed by John Wallace. The appeal is dismissed as of August 3, 2016. The appellant failed to timely failure to pay docketing fee. Issued as Mandate: August 3, 2016. (bdg) (Entered: 08/04/2016)
08/08/2016	<u>39</u>	ORDER denying <u>36</u> Motion to Reinstate Appeal. Wallace has not provided a sufficient basis for the court to reconsider its denial of IFP status on appeal. (Ordered by Magistrate Judge D. Gordon Bryant, Jr on 8/8/2016) (bdg) (Entered: 08/08/2016)
08/08/2016		***Clerk's Notice of delivery: (see NEF for details) Docket No:39. Mon Aug 8 15:18:08 CDT 2016 (crt) Modified on 8/8/2016 (bdg). (Entered: 08/08/2016)

08/08/2016		Magistrate Judge D. Gordon Bryant, Jr added. Magistrate Judge Nancy M Koenig no longer assigned to case. Special Order 3-309 (bdg) (Entered: 08/08/2016)
08/08/2016		***Clerk's Notice of delivery: (see NEF for details) Docket No:39. Mon Aug 8 15:23:03 CDT 2016 (crt) (Entered: 08/08/2016)
08/12/2016	<u>40</u>	Request for Copy of Docket sheet by John Wallace. Mailed Plaintiff a courtesy copy of docket sheet. (bdg) (Entered: 08/12/2016)
08/16/2016	<u>41</u>	MOTION for Reconsideration re <u>39</u> Order on Motion to Reinstate Appeal filed by John Wallace. (bdg) (Entered: 08/16/2016)
08/30/2016	<u>42</u>	ORDER denying <u>41</u> Motion for Reconsideration re Order on Motion to Reinstate Appeal(Ordered by Magistrate Judge D. Gordon Bryant, Jr on 8/30/2016) (bdg) (Entered: 08/30/2016)
08/30/2016		***Clerk's Notice of delivery: (see NEF for details) Docket No:42. Tue Aug 30 11:22:22 CDT 2016 (crt) (Entered: 08/30/2016)
02/06/2017	<u>43</u>	MOTION for Rule 60(B) filed by John Wallace (bdg) (Entered: 02/07/2017)
02/14/2017	<u>44</u>	ORDER denying <u>43</u> Motion for Rule 60(B). Wallace is reminded that frivolous filings by prisoners consume inordinate amounts of scarcejudicial resources, and may result in the delay of the court hearing valid complaints. Filings like the instant motion may be construed as frivolous, and Wallace is cautioned that if he continues to file frivolous motions in this case, sanctions may be imposed against him. Such sanctions may include monetary sanctions or a complete bar to filing pleadings without leave of the court. (Ordered by Magistrate Judge D. Gordon Bryant, Jr on 2/14/2017) (cb) (Entered: 02/14/2017)
02/14/2017		***Clerk's Notice of delivery: (see NEF for details) Docket No:44. Tue Feb 14 11:26:41 CST 2017 (crt) (Entered: 02/14/2017)
03/02/2017	<u>45</u>	MOTION to Vacate <u>21</u> Judgment filed by John Wallace (bdg) (Entered: 03/02/2017)
03/06/2017	<u>46</u>	Brief in Support filed by John Wallace re <u>43</u> MOTION for Rule 60(B) (bdg) (Entered: 03/07/2017)
03/06/2017	<u>47</u>	ORDER denying <u>45</u> Motion to Vacate. A monetary sanction in the amount of \$25.00 is assessed against Wallace. The agency having custody over Wallace shall place a hold on Wallace's inmate trust account and shall pay the sanction when funds are available. Wallace is prohibited from filing any new civil rights complaints until the sanction imposed has been paid in full. Wallace is barred from filing any further motions, pleadings, or other documents in this civil action, except for a notice of appeal, which must be accompanied by the appellate filing fee. Any further motions, pleadings, or other documents submitted by Wallace for filing in this civil action <u>will not be filed by the Clerk, will not be considered by the court and will not be returned to Wallace.</u> A copy

		of this order shall be mailed to the inmate accounting office or facility in which Wallace is confined. (Ordered by Magistrate Judge D. Gordon Bryant, Jr on 3/6/2017) (bdg) (Entered: 03/07/2017)
03/07/2017		***Clerk's Notice of delivery: (see NEF for details) Docket No:47. Also mailed a copy of order to TDCJ Ellis Unit - Inmate Accounting Office Tue Mar 7 10:39:05 CST 2017 (crt) Modified text on 3/7/2017 (bdg). (Entered: 03/07/2017)
04/19/2018	<u>48</u>	***CLERK'S ERROR*** Unfiled per Order <u>47</u> filed by John Wallace (bmg) Modified on 4/19/2018 (bmg). (Entered: 04/19/2018)
05/07/2018	<u>49</u>	Status Request by John Wallace with Deputy Clerk Response. Clerk also mailed a copy of Order, Document Number <u>47</u> stating plaintiff is BARRED FROM FILING ANY FURTHER MOTIONS, PLEADINGS, OR OTHER DOCUMENTS IN THIS CIVIL ACTION, EXCEPT FOR A NOTICE OF APPEAL, WHICH MUST BE ACCOMPANIED BY THE APPELLATE FILING FEE, AND ALSO STATES DOCUMENTS WILL NOT BE FILED BY THE CLERK, CONSIDERED BY THE COURT, AND WILL NOT BE RETURNED. (Attachments: # <u>1</u> Clerk's Correspondence) (zzm) (Entered: 05/07/2018)

APPENDIX
C

Case: 6:12cv187

John Patrick Wallace 1621931
Ellis Unit
1197 FM 980
Huntsville, TX 77343

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

JOHN P. WALLACE, #1621931

§

VS.

§

CIVIL ACTION NO. 6:12cv187
APPEAL NO. 12-41013

JOHN A. RUPERT, ET AL.

§

ORDER

Before the Court is Plaintiff's motion for reconsideration (Dkt. #29) of an order denying his motion to reopen the case. He has also filed a handwritten motion for leave to proceed *in forma pauperis* (Dkt. #30). In the motion for reconsideration, he states that he is not trying to reopen the case; instead, the Fifth Circuit is requiring him to submit a motion for leave to proceed on appeal *in forma pauperis*. A review of the record in Appeal Number 12-41013 reveals that the Fifth Circuit sent a letter to Plaintiff, dated May 4, 2017, informing him that the appeal was dismissed for failure to pay the filing fee. He was further advised that the default remains outstanding. It was noted that his appeal will be reinstated only if the Fifth Circuit receives proof that the default has been remedied. He was warned, however, that the Fifth Circuit normally will not reinstate the appeal because of the amount of time involved since his appeal was dismissed. In light of the Fifth Circuit's letter, Plaintiff is asking the Court to reconsider its order.

Plaintiff did not need to file a motion to reopen the present case in order to comply with the Fifth Circuit's instructions. As such, the motion for reconsideration should be denied. It is again noted that Plaintiff must comply with the Fifth Circuit's instructions. To the extent that he desires to file a motion to proceed on appeal *in forma pauperis*, he must submit an application to proceed on appeal

in forma pauperis, along with an *in forma pauperis* data sheet. Both documents are available in the law library. Even though Plaintiff filed a handwritten motion to proceed *in forma pauperis*, he did not submit the requisite application and *in forma pauperis* data sheet. Until he submits the correct documents, the Court cannot grant his motion. It is therefore

ORDERED that the motion for reconsideration (Dkt. #29) is **DENIED**. All motions not previously ruled on are **DENIED**.

So ORDERED and SIGNED this 13th day of July, 2017.



K. NICOLE MITCHELL
UNITED STATES MAGISTRATE JUDGE

12-41013

Mr. John Patrick Wallace
#1621931
CID Skyview Unit
379 FM 2972, W.
Rusk, TX 75785-0000

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

September 05, 2017

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 12-41013 John Wallace v. John Rupert, et al
USDC No. 6:12-CV-187

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Christina A. Gardner, Deputy Clerk
504-310-7684

Mr. John Patrick Wallace

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 12-41013

JOHN PATRICK WALLACE,

Plaintiff - Appellant

v.

JOHN A. RUPERT; WARDEN UNKNOWN WISENER; EDWIN ATCHISON;
WARDEN UNKNOWN DOGLES; JOHN KARNES,

Defendants - Appellees

Appeal from the United States District Court for the
Eastern District of Texas, Tyler

O R D E R:

On August 17, 2017, the clerk denied appellant's motion to reinstate this appeal. Upon consideration of appellant's motion for reconsideration, IT IS ORDERED that the motion is DENIED.

/s/ E. Grady Jolly

E. GRADY JOLLY
UNITED STATES CIRCUIT JUDGE

12-41013

Mr. John Patrick Wallace
#1621931
CID Ellis Unit
1697 FM 980
Huntsville, TX 77343-0000

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

September 29, 2017

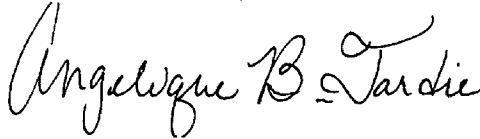
MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 12-41013 John Wallace v. John Rupert, et al
USDC No. 6:12-CV-187

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

A handwritten signature in cursive script, reading "Angelique B. Tardie".

By: _____
Angelique B. Tardie, Deputy Clerk
504-310-7715

Mr. John Patrick Wallace

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 12-41013

JOHN PATRICK WALLACE,

Plaintiff - Appellant

v.

JOHN A. RUPERT; WARDEN UNKNOWN WISENER; EDWIN ATCHISON;
WARDEN UNKNOWN DOGLES; JOHN KARNES,

Defendants - Appellees

Appeal from the United States District Court for the
Eastern District of Texas, Tyler

Before JOLLY, SMITH, and HAYNES, Circuit Judges.

PER CURIAM:

On September 5, 2017, a member of this panel previously denied appellant's motion for reconsideration of the clerk's August 17, 2017 order denying the motion to reinstate. The panel has considered appellant's motion for reconsideration. IT IS ORDERED that the motion is DENIED.

APPENDIX

D

John P Wallace 1621931
Polunsky Unit
3872 FM 350
Livingston, TX 77351

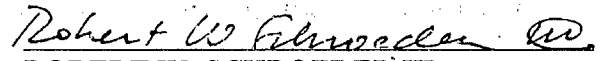
On March 21, 2018, Plaintiff then filed a notice of appeal (Dkt. #51) to the court's order (Dkt. #40) denying the motion to lift a strike issued by the Fifth Circuit (Dkt. #39). Plaintiff filed two motions for leave to appeal *in forma pauperis* (Dkt. ##54, 55) on April 18, 2018. The next day, the court denied both motions because Plaintiff is barred from proceeding *in forma pauperis* on appeal because of the "three strikes" rule under 28 U.S.C. § 1915(g) (Dkt. #57). On the same day, the Fifth Circuit dismissed Plaintiff's appeal for want of prosecution as he had failed to timely pay the filing fee. (See Dkt. #56).

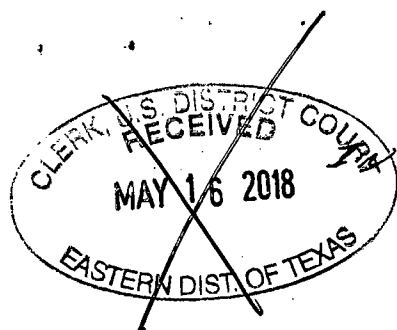
At this moment, Plaintiff does not have an appeal pending in the current case. Until such time that the Fifth Circuit reinstates Plaintiff's appeal, Plaintiff's motion to exempt him from payment of the appellate filing fees under the PLRA is moot. It is accordingly

ORDERED that Plaintiff's motion to exempt Plaintiff of PLRA filing fees (Dkt. #58) is **DENIED** as moot. It is further

ORDERED that the Clerk of the Court shall return unfiled any new documents submitted by Plaintiff unless the Fifth Circuit reopens Plaintiff's appeal and remands the case for further consideration.

SIGNED this 2nd day of May, 2018.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE



THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

JOHN P. WALLACE
(PLAINTIFF)

VS.

CIVIL ACTION NO. 16-15-LU-53

JOHN A. RUPERT (E.L.A.)
(DEFENDANT)

MOTION FOR MISCELLANEOUS
RELIEF

TO THE HONORABLE DISTRICT COURT:

Now, here comes the Plaintiff, moving the Court
in the above matter.

The Plaintiff requests the Court to construe this
motion in its most operative manner, and further not
held to the most liberal terms.

As closest to VACATING AN ORDER.

The Plaintiff, THEN submitted A 'SEPARATE' Motion
in strict Relief Exempting the Plaintiff from P.H.N.A.'s &
filing fees. (DKT #58)

The Plaintiff was in receipt of Document #59.
In which the Magistrate Decided the Motion AS
MERITED.

The Plaintiff A Motion To Proceed I.F.P. which
was up in VERBATUM within this Court's ruling.

The Magistrate Argued That Motion To Proceed
I.F.P. which was Actually A Motion for Exemption
of Filing Fee's was Moot.

The Movant Holds That The Fifth Circuit Is
Without Authority To Institute A Case In which The
District Court Has Allowed leave To Proceed without
Prejudice The Issue To litigate.

The District Court Has To GRANT The Movant's
Motion To Proceed I.F.P.

The Fifth Circuit Will Not AGT Unless The
District Statutorily Authorize's Proceedings To Pursue
I.F.P.

As The District Court Has GRANTED freely
leave To Proceed. As The Issue Challenges The
THIRD STRIKE. ~~TH~~

THEREFORE: The Plaintiff "HAS NOT STRUCK
OUT."

FURTHER: The Court Must Dispute Motion For
CONSIDERATION.



IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

JOHN P. WALLACE
(PLAINTIFF)

vs.

CIVIL ACTION NO. 6:15-LV-53

JOHN A. RUBERT (E.A.A.)
(DEFENDANT)

PLAINTIFF'S FIRST MOTION FOR
RECONSIDERATION

TO THE HONORABLE DISTRICT COURT:

Now, Here Comes The Plaintiff Pursuant To Fed. R. Civ. Proc. 59(e). Proceeding Pro-se, and In Request That This Court Construe This Application To Raise The Strongest Alberta In Favor Of The Movant.

The Movant Has NO Intent's To Re-raise Arguments, Rehash any Form of Litigation. Only Address Misapplication Contrary To Law. Which Could, Per, ~~And~~ Will Create A Manifest Injustice For The Plaintiff.

This Court Is Legally Bound By Fed. R. Civ. Proc. 59(e), 1915(A); 1915(B) To Allow The Plaintiff To Proceed I.F.P. See C.9 Smith vs. U.S., 532 F.3d 1144. P issues of third strike; holding 682 F.3d 463.

ISSUE II

This Honorable Court GRANTED LEAVE FREELY TO ADDRESS THE THIRD, and LAST STRIKE WITH THE FIFTH CIRCUIT COURT ON JANUARY 8TH, 2018, AND HEAR FREELY ON MARCH 1ST, 2018 TO PURSUE THE MATTER WITH THE NORTHEAST DISTRICT COURTHOUSE.

The Plaintiff Should Not Be Charged An Appellate Filing For A Single and Separate Matter AS Interlocutory.

This Issue Clearly Creates An Matter Of Substance, and Federal Question Which Should Not Evade The Chambers Of Justice.

The Plaintiff Had Paid Enough Filing Fee's For This identical Cause.

"WHEN LEAVE OF JUSTICE IS GRANTED TO AN APPLICANT, THE DO'EN IS THEN OF ANY EXTRA DUTIE'S."

SHALL THIS COURT DISMISS THIS APPLICATION. Please State With Reference The Strike's APPLICABLE TO DENT THIS MOTION FOR RECONSIDERATION. EVANS VS. ILLINOIS DEPT OF CORR. 156 F.3d 210, 815 (7TH Cir 1998)

This Honorable Court is Statutorily Authorized
To Allow The Plaintiff To Move Forward.

This Court Also Has To Be In Acceptance That There Is NO
'Well Settled law' To Support Wallace's Position.

As He Should Not Pursue The Writ of Mandamus. See
90 F.3d 415 (10th Cir 1996) Unresolved Writ of Third Strike

As This Court Is In Agreement That He Is Challenging
The Third Strike.

On February 25th, 2016 The Northern District Court House
Of The Hubbock Division Dismissed Cause # 5:15-LW-168.
Within That Day Magistrate Judge NANCY KOENIG
Counted The Dismissal Of The Fifth Circuit I.F.P MARCH
24th, 2016 As In Incurred Strike.

ANY COURT ASSESSED STRIKE ISSUED THEREAFTER
MARCH 24th, 2016 WILL NOT COUNT TOWARD'S THE DISMISSAL
ISSUED APRIL 19th, 2012, IN REGARD'S TO THE REGARD OF
I.F.P ON APPEAL.

FOR THE REASONS STATED, AUTHORITIES, AND
CONCLUSIONS Omitted. THE PLAINTIFF RESPECTFULLY
REQUEST'S THIS HONORABLE COURT TO GRANT MOTION TO
VOID I.F.P AS RECONSIDERATION.

PRAYER OF RELIEF

FOR ISSUES I. and II stated. The Appellant
REQUESTS THAT MOTION FOR RECONSIDERATION BE
GRANTED IN ITS ENTIRETY AND PURSUE INFORMAL
PARENTS ON APPEAL.

CERTIFICATE OF DECLARATION

Pursuant 28 U.S.C. 1846. MR. JOHN WALLACE
Perjury Under Oathsworn The Penalty of Perjury That
All FACTS Stated Is TRUE As Omitted. Etc
4-28-2018

Respectfully Submitted

X JOHN WALLACE

X Allen B. Wolanski

Allen B. Wolanski

3272 Ln 350

HOUSTON, TX 77381

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

JOHN P. WALLACE, #1621931 §
VS. § CIVIL ACTION NO. 6:15cv053
JOHN A. RUPERT, ET AL. §

ORDER REGARDING MOTION TO PROCEED
IN FORMA PAUPERIS ON APPEAL

Before the court is Plaintiff's Motion to Exempt Plaintiff of PLRA Filing Fees (Dkt. #58). Plaintiff is requesting that the court waive the required payment of his filing fees under the Prison Litigation Reform Act for the purposes of appeal. Plaintiff states that he was ordered to pay a filing fee in three instances —*Wallace v. Rupert, et al.*, Cause No. 6:12cv187, the current suit, Cause No. 6:15cv053, and an appellant filing fee in Cause No. 15-40750; and thus, he should not be required to pay the filing fee for his most recent appeal.

The procedural history of the current case reflects that Plaintiff's complaint was dismissed as time-barred pursuant to 28 U.S.C. § 1915A(b)(1) on April 6, 2015 (Dkt. ##22 and 23). On appeal, the Fifth Circuit dismissed Plaintiff's appeal as frivolous (Dkt. #36), *Wallace v. Rupert*, No. 15-40750 (5th Cir. March 24, 2016).

On January 3, 2018, Plaintiff filed his motion to conduct expedited review of three strikes dismissal (Dkt. #39) requesting that this court lift the 28 U.S.C. § 1915(g) strike imposed by the Fifth Circuit's April 15, 2016 opinion. This court entered an order denying Plaintiff's motion on the basis that the court has no authority to "lift" a decision issued by the Fifth Circuit (Dkt. #40).

On March 21, 2018, Plaintiff then filed a notice of appeal (Dkt. #51) to the court's order (Dkt. #40) denying the motion to lift a strike issued by the Fifth Circuit (Dkt. #39). Plaintiff filed two motions for leave to appeal *in forma pauperis* (Dkt. ##54, 55) on April 18, 2018. The next day, the court denied both motions because Plaintiff is barred from proceeding *in forma pauperis* on appeal because of the "three strikes" rule under 28 U.S.C. § 1915(g) (Dkt. #57). On the same day, the Fifth Circuit dismissed Plaintiff's appeal for want of prosecution as he had failed to timely pay the filing fee. (See Dkt. #56).

At this moment, Plaintiff does not have an appeal pending in the current case. Until such time that the Fifth Circuit reinstates Plaintiff's appeal, Plaintiff's motion to exempt him from payment of the appellate filing fees under the PLRA is moot. It is accordingly

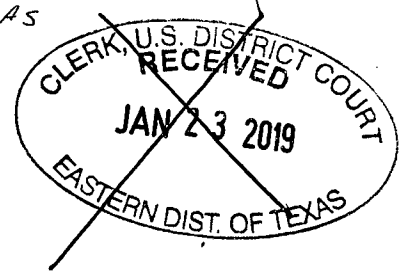
ORDERED that Plaintiff's motion to exempt Plaintiff of PLRA filing fees (Dkt. #58) is **DENIED** as moot. It is further

ORDERED that the Clerk of the Court shall return unfiled any new documents submitted by Plaintiff unless the Fifth Circuit reopens Plaintiff's appeal and remands the case for further consideration.

SIGNED this 2nd day of May, 2018.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION



JOHN P. WALLACE
(PLAINTIFF)

VS.

CIVIL ACTION NO. 1:15-LU-53

JOHN A. RUDENT ET AL
(DEFENDANT)

MOTION FOR RELIEF OF
FINAL JUDGEMENT

TO THE HONORABLE COURT:

Now, Here Comes The Plaintiff Pursuant To
FED. R. CIV. PROC. 60(b)(6). As (b) IS ANY OTHER Reason
Justifying Relief From The Operation Of The Judgement:
Kalluprott vs. U.S., 335 U.S. 601, 69 S.Ct 384 (1949);
OKORO vs. HEMINGWAY, 411 F.3d 873, 876 (CA4 Cir 2017).

As The Plaintiff Is A Pro-Se Applicant. This
Motion Is Not To Be Construed Under ANY Terms Of
Formality. In Context That The Movant Presents This
Application In 'GOOD FAITH' Standing Within A Timely
Manner. Also As Time's Of Equity May Mandate Relief.

This Court Has competent Jurisdiction Within
The Claims Presented.

Issue 1 - He seeks Relief from Civil # 6:15-cv-58
In Conjunction To Civ # 2:12-cv-187. In The Earlier
Suit He Presented Claims of ON-GOING Conduct, and
ALLIANCE VIOLATIONS In The Most Ruled Contract To
and Applicable To Law.

* The Applicant May RE-VISIT ANY EARLIER SUIT
IF ON-GOING CONDUCT HAS NOT SEIZED.

Issue 2 - The EASTERN COURT Never Issued A
1915(2) STRIKE Per-Se. But wishes To Dispute ANY
STRIKE Applicable To Law. As This STRIKE Had
Prevented The Plaintiff From Exercising His
Constitutional Human Rights.

WHEREFORE: Shall This Honorable Court
Agree With WAHWALE'S Imposition, and Pursuant
To The Local Rules.

Then The Court Shall Allow The Plaintiff A
Time Period To Present A Brief of Arguments In
Support of The Above Motion.

The Plaintiff Wants The Court to Understand
That He Has Exhausted Every Domestic Remedy
Known To Man.

As The Claims Set Forth, Are Circumstances of
Extraordinary.

The Claims In The Motion To Reconsider May
Be Reviewed For Any Possible Abuse Of Discretion.
WRIGHT & MATHIAS Fed Practice Procedure P. 11
2271 at 157.

And FACTS Favorable In Light of ... In Prayer
Request for The Following Relief.

PRAYER OF RELIEF

The Plaintiff Prays That All Claims
Set Forth Be GRANTED.

CERTIFICATE OF DECHARGE

I John Wallace testily under oath
and pursuant to the penalty of perjury
that all facts and omissions are true &
FORGIVING, Exec 1-13-2019

Respectfully Submitted

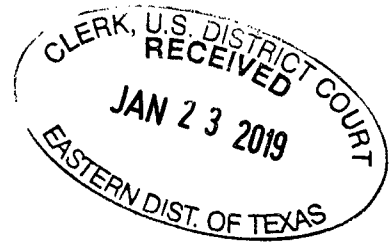
JOHN WALLACE

John Wallace

MARK STEELER ZINER

3060 FM 3514

BEAUMONT TX 77705



CERTIFICATE OF SERVICE

I Thomas Wallace do hereby certify under oath,
and pursuant to the penalty of perjury
that all facts and provisions are true &
correct.

Respectfully submitted

THOMAS WALLACE

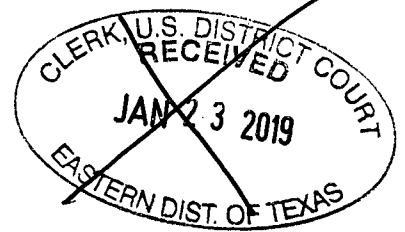
x Thomas Wallace

MARK STILES UNIT

3060 FM 3814

BEAUMONT, TX 77705

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
THIRTH DIVISION



JOHN O. WALLACE
(PLAINTIFF)

VS.

CIVIL ACTION NO. 15-CV-53

JOHN A. NURENT (E.E.A.L.)
(DEFENDANT)

MOTION FOR RELIEF OF
FINAL JUDGEMENT
TO THE HONORABLE COURT:

Now, Here Comes The Plaintiff Pursuant 96
FED. R. CIV. PROC. 60(b)(4). As (4) is not other reason
Justifying Relief From The Operation of The Judgement.
Kul & Proff US. 635 US. 601, 89 S.Ct 334 (1999);
OKRO vs. HEMMISWAY, 411 F.3d 873, 876 (2d Cir 2017).

As the Plaintiff is a Pro-Se Applicant, this
motion is not to be construed under any terms of
FIDUCIARY. In context that the Plaintiff presents this
Application in 'GOOD FAITH' standing within a timely
manner. Also as Times of Equity that Mandate Relief.

This Court Has Complete Jurisdiction Within The
Claims Presented.

Issue 1 - He Seeks Relief From Crd #6:15-10-53
In Conjunction To Crd #6:12-10-187. In The Earlier
Suit He Presented Claims of ON-GOING Production and
Accrual Violations In The Court Ruled Contract To,
Applicable To Law.

*The Applicant May RE-VISIT AN EARLIER SUIT
IF ON-GOING CONDUCT HAS NOT SEIZED.

Issue 2 - The EASTERN Court NEVER Issued A
1915/9) STRIKE Per-Su But Wishes To Dispute AN
STRIKE Applicable To Law. As This STRIKE Has
Prevented The Plaintiff From Exercising His
Constitutional Human Rights

THEREFORE; Shall This Honorable Court
Agree With WALLACE'S Imposition, and Persuade
To The Local Rule's.

Then The Court Shall Allow The Plaintiff
A Time Period To Present A Brief of Argument's
In Support of The Above Motion.

The Plaintiff wants the Court to understand
that he has exhausted every domestic remedy
known to man.

As the Plaintiff sets forth, the circumstances of
extraordinary.

The Plaintiff in this Motion is proper, and must
be reviewed for any possible abuse of discretion.
WRIGHT & MILLER Fed Practice Procedure Rev 4
2872 at 157.

ALL FACTS favorable in light of... In Prayer
request for the following relief.

PRAYER OF RELIEF

The Plaintiff prays that all claims
set forth be GRANTED.

APPENDIX
E

18-40901

Mr. John Patrick Wallace
#1621931
CID Ellis Unit
1697 FM 980
Huntsville, TX 77343-0000

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

October 05, 2018

#1621931
Mr. John Patrick Wallace
CID Ellis Unit
1697 FM 980
Huntsville, TX 77343-0000

No. 18-40901 In re: John Wallace
USDC No. 6:15-CV-53

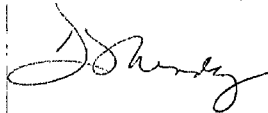
Dear Mr. Wallace,

We received your "Motion for Exemption of P.L.R.A. Filing Fee." As indicated in the clerk's notice issued on September 24, 2018, because you have had three or more of your civil case dismissed as frivolous, you are no longer eligible to proceed in forma pauperis and will need to pay the full \$500.00 filing fee in order to proceed. As such, we take no action on your motion.

As a reminder, your compliance with the court's notice initially issued is due on or before of October 24, 2018. Failure to comply within this time will result in the dismissal of your mandamus action.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Donna L. Mendez, Deputy Clerk
504-310-7677

From John Wallace ..

Subj: Hagerlot Asset Status
 I 1840901 - Wallace v. Ryant

11/8/18

Historical Hulls Submitted?
John Wallace
John Wallace
 James Alfred Hall
 2161 5th Ave
 Tower Park, TX 76369

(Info Copies Enclosed)

Shelden
Deputy Clerk

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

October 05, 2018

#1621931
Mr. John Patrick Wallace
CID Ellis Unit
1697 FM 980
Huntsville, TX 77343-0000

INFO COPY

No. 18-40901 In re: John Wallace
USDC No. 6:15-CV-53

Dear Mr. Wallace,

We received your "Motion for Exemption of P.L.R.A. Filing Fee." As indicated in the clerk's notice issued on September 24, 2018, because you have had three or more of your civil case dismissed as frivolous, you are no longer eligible to proceed in forma pauperis and will need to pay the full \$500.00 filing fee in order to proceed. As such, we take no action on your motion.

As a reminder, your compliance with the court's notice initially issued is due on or before of October 24, 2018. Failure to comply within this time will result in the dismissal of your mandamus action.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Donna L. Mendez, Deputy Clerk
504-310-7677

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

October 31, 2018

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 18-40901 In re: John Wallace
USDC No. 6:15-CV-53

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

Angelique B. Tardie

By: _____
Angelique B. Tardie, Deputy Clerk
504-310-7715

Mr. John Patrick Wallace

INFO COPY

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-40901

In re: JOHN PATRICK WALLACE,

Petitioner

Petition for a Writ of Mandamus
to the United States District Court for the
Eastern District of Texas

CLERK'S OFFICE:

Under 5TH CIR. R. 42.3, the petition is dismissed as of October 31, 2018, for want of prosecution. The petitioner failed to timely pay the docketing fee.

The petition also remains insufficient as noted in this court's letter dated September 24, 2018. If petitioner moves to reopen, a sufficient petition must accompany any motion to reopen.

LYLE W. CAYCE
Clerk of the United States Court
of Appeals for the Fifth Circuit



By: _____
Angelique B. Tardie, Deputy Clerk

ENTERED AT THE DIRECTION OF THE COURT

f

✓ PPE VDIK

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

October 8, 2019

John Wallace
TDCJ-ID #01621931
Stiles Unit
3060 FM 3514
Beaumont, TX 77705

RE: Judicial Misconduct Complaint Nos. 05-19-90151 and 05-19-90152

Dear Mr. Wallace:

Your complaint against United States Magistrate Judges Nancy M. Koenig and D. Gordon Bryant, Jr. has been dismissed.

Enclosed is a copy of the order. Procedures for filing a petition for review of the order are set out in Rule 18 of the enclosed Rules For Complaints of Judicial-Conduct and Judicial-Disability Proceedings. We must receive any petition for review in the Clerk's office by no later than November 19, 2019. See Rule 18(b).

Sincerely,
LYLE W. CAYCE
Clerk

By 
Shelley E. Saltzman, Deputy Clerk

Encls.

OCT 08 2019

FIFTH CIRCUIT
LYLE W. GAYCE, CLERKIN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

IN RE:

The Complaint of John Patrick Wallace Against
retired United States Magistrate Judge Nancy M. Koenig
and United States Magistrate Judge D. Gordon Bryant, Jr.,
Northern District of Texas,
Under the Judicial Improvements Act of 2002.

Complaint Numbers: 05-19-90151 and 05-19-90152

O R D E R

Texas prisoner John Patrick Wallace complains that despite “clearly demonstrat[ing] a factual basis for relief” in NTX No. 5:15-cv-00168, United States Magistrate Judge Nancy M. Koenig intentionally dismissed the lawsuit as frivolous to cause him to incur a third strike for the purposes of 28 U.S.C. § 1915(g), an allegedly unlawful decision that “barred [me] of utilization to the Courts.” For example, Wallace appears to claim that Magistrate Judge Koenig’s imposition of a third strike resulted in the Fifth Circuit denying his motion to proceed in forma pauperis [“IFP”] in an unrelated appeal [5th Cir. 15-40750], and/or it was “unlawful” to impose the strike while that motion was pending, and/or the magistrate judge intentionally imposed the strike in order to deny IFP should Wallace file an appeal from her decision.

Wallace concludes that Magistrate Judge Koenig “retired off the bench to avoid conducting a hearing or trial of a factual dispute,” her “intentional and deviant behavior create[d] fraud, and “such behavior is judicially impermissible.”

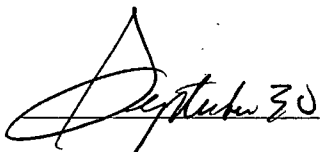
As provided by 28 U.S.C. § 351(d)(1) and Rule 4 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, retired judicial officers are not subject to the Judicial Improvements Act and the complaint as to Magistrate Judge Koenig may therefore be concluded under 28 U.S.C. § 352(b)(2).

Wallace complains that United States Magistrate Judge D. Gordon Bryant, Jr. denied his motions for reconsideration of Magistrate Judge Koenig's denial of IFP on appeal and dismissed his Rule 60(b) motion "without explanation" in "retaliation for [Wallace's] using the judicial process" to sue the defendant prison officials. He submits that the magistrate judge violated his oath of office by failing to "report or intervene correctly to such conduct" and "by denying equal right [sic] to the poor."

To the extent that the allegations relate directly to the merits of Magistrate Judge Bryant's decisions or procedural rulings, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the allegations of retaliation and bias appear entirely derivative of the merits-related charges, but to the extent the allegations are separate, they are wholly unsupported, and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii) as "lacking sufficient evidence to raise an inference that misconduct has occurred."

Judicial misconduct proceedings are not a substitute for the normal appellate review process, nor may they be used to obtain reversal of a decision or a new trial.

The complaint is DISMISSED.

 September 30, 2019


Carl E. Stewart
Chief Judge

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