

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ELIJAH JACKSON, JR.,

Plaintiff,

v.

Case No.: 8:17-cv-01294-EAK-SPF

UNITED STATES DEPARTMENT
OF HOUSING AND URBAN
DEVELOPMENT, *et al.*,

Defendants.

ORDER

This matter comes before the Court on review of United States Magistrate Judge Sean P. Flynn's Report and Recommendation ("R&R"), recommending that Plaintiff Elijah Jackson, Jr.'s Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis ("Affidavit"), (Doc. 34), through which Plaintiff seeks to proceed *in forma pauperis* on appeal, be denied. (Doc. 36).¹

Under the Federal Magistrate's Act ("Act"), Congress vested Article III judges with the power to "designate a magistrate judge to hear and determine any pretrial matter pending before the court," subject to various exceptions. 28 U.S.C. § 636(b)(1)(A). The Act further vests magistrate judges with authority to submit proposed findings of fact and recommendations for disposition by an Article III judge. 28 U.S.C. § 636(b)(1)(B). "Within fourteen days after being served with a copy [of a magistrate's report and recommendation], any party may serve and file written objections to such proposed findings and recommendations." 28 U.S.C. § 636(b)(1). On

¹ Plaintiff originally filed the Affidavit in the United States Court of Appeals for the Eleventh Circuit, which in turn forwarded it to this Court for disposition. *See* (Doc. 34). The Affidavit was referred to Magistrate Judge Sean P. Flynn for a Report and Recommendation. *See id.* After initially dismissing Plaintiff's appeal, (Doc. 30), the Eleventh Circuit clerically granted Plaintiff's motion to reinstate the appeal, stating that it would explain how to proceed after this Court ruled on the Affidavit. (Doc. 37).

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review by the district court, “the court shall make a *de novo* determination of those portions of the report . . . to which objection is made.” *Id.*

After filing his “Notice of Errors and Corrections; and Motion for New Trial; Altering or Amending Judgment Document 30,” (Doc. 33), Plaintiff filed the Affidavit on August 9, 2018. (Doc. 34). The Magistrate Judge subsequently issued the R&R, in which he recommended that Plaintiff’s request to proceed *in forma pauperis* on appeal be denied. (Doc. 36). On September 6, 2018, the Court extended the deadline for Plaintiff to file objections to the R&R to October 6, 2018. (Doc. 39). The Court subsequently entered an Order adopting the R&R on October 10, 2018, because Plaintiff had failed to file any objections to the R&R at that time. (Doc. 40). After learning that Plaintiff had filed a Second Motion for Extension of Time, (Doc. 42), which was not entered on the Court’s docket until after the Court issued its Order, the Court vacated the Order and granted Plaintiff an extension of time until and including October 31, 2018, to file objections to the R&R. (Doc. 43).

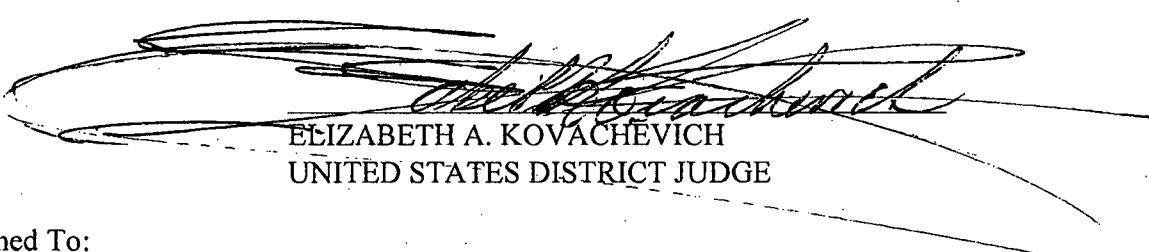
Plaintiff filed his Written Objections to the R&R and his Amended Written Objections to the R&R on October 31, 2018. (Docs. 47, 48). Plaintiff appears to request an additional extension of time through both the Written Objections and the Amended Written Objections. (Docs. 47, 48). As explained above, the Court has previously granted extensions of time to Plaintiff so that he could file objections to the R&R. (Docs. 39, 43). The Court declines to do so again. After careful consideration of the R&R, in conjunction with a *de novo* review of Defendant’s objections and an independent examination of other relevant portions of the file, the Court finds that the R&R is well-reasoned and correct. The Court accordingly overrules each of Defendant’s objections. The R&R is thus adopted by the Court and incorporated into this Order by reference.

ACCORDINGLY, it is therefore **ORDERED AND ADJUDGED** that:

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1. To the extent that Plaintiff seeks an extension of time to file objections to Judge Flynn's Report and Recommendation, (Doc. 36), through his Written Objections to the Report and Recommendation, (Doc. 47), and his Amended Written Objections to the Report and Recommendation, (Doc. 48), such relief is **DENIED**.
2. Judge Flynn's Report and Recommendation, (Doc. 36), is **ADOPTED**, **CONFIRMED**, and **APPROVED** in all respects and is made a part of this order for all purposes.
3. Plaintiff's Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis, (Doc. 34), is **DENIED**.

DONE and **ORDERED** in Chambers, in Tampa, Florida this 5 th day of November, 2018.



ELIZABETH A. KOVACHEVICH
UNITED STATES DISTRICT JUDGE

Copies Furnished To:

Counsel/Parties of Record

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ELIJAH JACKSON, JR.,

Plaintiff,

v.

Case No. 8:17-cv-1294-T-17SPF

UNITED STATES DEPARTMENT
OF HOUSING AND URBAN
DEVELOPMENT, *et al.*,

Defendants.

REPORT AND RECOMMENDATION

Before the Court is Plaintiff's Affidavit Accompanying Motion for Permission to Appeal *In Forma Pauperis* (Doc. 34), construed by this Court as a motion to proceed *in forma pauperis* on appeal.

The Prison Litigation Reform Act ("PLRA") amended 28 U.S.C. § 1915 by adding the following subsection:

(g) In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section 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.

Because Plaintiff has had at least three prior dismissals that qualify under Section 1915(g)¹ and because he is not under imminent danger of serious physical injury, Plaintiff is not entitled

¹ The Court takes judicial notice of four federal district court cases previously brought by Plaintiff that were dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted: (1) 8:14-cv-1764-T-23MAP, Doc. 8 (M.D. Fla. May 20, 2015); (2) 8:11-cv-646-T-17EAJ, Doc. 4 (M.D. Fla. Mar. 30, 2011); (3) 8:04-cv-2790-T-26EAJ,

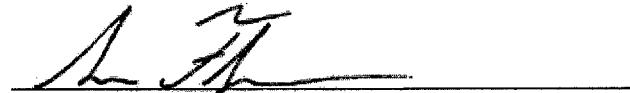
to proceed *in forma pauperis* on appeal. *See Dupree v. Palmer*, 284 F.3d 1234, 1236 (11th Cir. 2002) (“The purpose of the PLRA is to curtail abusive prisoner litigation.”).

Moreover, even if Plaintiff was not precluded from proceeding *in forma pauperis* on appeal pursuant to 28 U.S.C. § 1915(g), his ability to appeal without prepayment of fees and costs is conditioned by 28 U.S.C. § 1915(a)(3), which provides that “[a]n appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith.” *Id.*; *see also Busch v. County of Volusia*, 189 F.R.D. 687, 691 (M.D. Fla. 1999). An appeal that is plainly frivolous is not taken in good faith. *See generally Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002) (action is frivolous for § 1915 purposes if it is without arguable merit either in law or in fact); *Bilal v. Driver*, 251 F.3d 1346, 1349 (11th Cir. 2001) (same); *Carroll v. Gross*, 984 F.2d 392, 393 (11th Cir. 1993) (case is frivolous for IFP purposes if, at any stage of the proceedings, it appears the plaintiff “has little or no chance of success”).

Plaintiff has failed to identify any colorable basis for appeal; he merely lists sections of the Fair Housing Act, 42 U.S.C. § 3601, *et seq.* He does not include any further argument or legal basis for his appeal. Accordingly, this Court concludes the instant appeal is not taken in good faith, is plainly frivolous, and Plaintiff has little or no chance of success. He is, therefore, ineligible for *in forma pauperis* status pursuant to 28 U.S.C. § 1915(a)(3) as well.

Therefore, I recommend that Plaintiff’s motion to proceed *in forma pauperis* on appeal be denied.

IT IS SO REPORTED in Tampa, Florida on August 14, 2017.



SEAN P. FLYNN
UNITED STATES MAGISTRATE JUDGE

NOTICE TO PARTIES

A party has fourteen days from this date to file written objections to the Report and Recommendation's factual findings and legal conclusions. A party's failure to file written objections waives that party's right to challenge on appeal any unobjected-to factual finding or legal conclusion the district judge adopts from the Report and Recommendation. *See* 11th Cir. R. 3-1.

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