

# Appendix - A

U.S. Court of Appeals Western District (Decision)



UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUITC.A. No. 19-2394

ANTHONY WILLIAMS, Appellant

v.

MUHAMMAD NAJI; ET AL.

(W.D. Pa. No. 3:18-cv-00110)

Present: BIBAS, Circuit Judge

Submitted are

- (1) Appellant's motion to proceed in forma pauperis; and
- (2) Appellant's motion alleging imminent danger

in the above-captioned case.

Respectfully,

Clerk

ORDER

Appellant's motion to proceed in forma pauperis ("IFP") is denied. Appellant has at least three strikes against him under 28 U.S.C. § 1915(g). Appellant thus can proceed IFP in this appeal only if he was "under imminent danger of serious physical injury" at the time he filed his appeal. *Id.*; see Abdul-Akbar v. McKelvie, 239 F.3d 307, 312 (3d Cir. 2001) (en banc). Appellant has not made this showing, as his allegations that he faces imminent danger from his Hepatitis C condition are conclusory.

Accordingly, if Appellant wishes to proceed with his appeal, he must pay the full applicable filing and docketing fees in the amount of \$505 to the Clerk of the U.S. District Court for the Western District of Pennsylvania within 14 days of the date of this order. No extensions of time to pay the fees will be granted. Failure to pay the filing and docketing fees within that time will result in dismissal of the appeal without further notice. See 3d Cir. L.A.R. Misc. 107.1(a).

(APPENDIX-A)

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ANTHONY WILLIAMS,	:
Plaintiff	:
v.	:Case No. 3:18-cv-110-KRG-KAP
DR. MUHAMMED NAJI, <i>et al.</i> ,	:
Defendants	:

Memorandum Order

The Magistrate Judge filed a Report and Recommendation on November 26, 2018, ECF no. 7, recommending that the plaintiff's motions to alter or amend the judgment at ECF no. 5 and ECF no. 6 be denied.


The plaintiff was notified that pursuant to 28 U.S.C. § 636(b)(1), he had fourteen days to file written objections to the Report and Recommendation. Plaintiff filed timely objections at ECF no. 8 that are meritless.

After *de novo* review of the record of this matter, the Report and Recommendation, and the objections thereto, the following order is entered:

AND NOW, this 24<sup>th</sup> day of May, 2018, it is

ORDERED that plaintiff's motions at ECF no. 5 and ECF no. 6 are denied. The Report and Recommendation at ECF no. 7 is adopted as the opinion of the Court.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Kim R. Gibson", written over a horizontal line.

KIM R. GIBSON,  
UNITED STATES DISTRICT JUDGE

Notice by U.S. Mail to:

Anthony Williams AY-6759  
S.C.I. Houtzdale  
P.O. Box 1000  
Houtzdale, PA 16698-1000

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ANTHONY WILLIAMS,	:
Plaintiff	:
v.	:Case No. 3:18-cv-110-KRG-KAP
DR. MUHAMMED NAJI, et al.,	:
Defendants	:

Report and Recommendation

Recommendation

Plaintiff's motions at ECF no. 5 and ECF no. 6, liberally construed as a motion to alter or amend the judgment under Fed.R.Civ.P. 59, should be denied.

Report

Plaintiff is an inmate serving a life sentence who because of the number of frivolous and meritless complaints he has filed is subject to the Prison Litigation Reform Act's three strikes rule, 28 U.S.C. §1915(g). Plaintiff has one action pending in this court, Williams v. Little, Case No. 3:18-cv-11-KRG-KAP (W.D.Pa.) which has recently been reviewed and cleared to proceed in part and in which he has been excused from the duty to prepay the filing fee because of a plausible claim that he is in imminent danger of serious physical injury.

This matter, however, was dismissed for failure to prepay the filing fee because there was no plausible claim of imminent danger of serious physical injury. Plaintiff's post-closing motions

assert in conclusory fashion that he should be relieved from prepaying the filing fee because this complaint too alleges that he is under imminent danger of serious physical injury. A Rule 59 motion should show new relevant evidence, a clear error of law, or a manifest injustice, See Wiest v. Lynch, 710 F.3d 121, 128 (3d Cir.2013) (discussing three purposes of motion under Fed.R.Civ.P. 59(e)). Plaintiff's conclusory claim is not supported by anything but plaintiff's construction of Eighth Amendment law. A Rule 59 motion is not a substitute for an appeal.

Pursuant to 28 U.S.C. § 636(b)(1), the plaintiff is given notice that he has fourteen days to file written objections to this Report and Recommendation.

DATE: 26 November 2018

Keith A. Pesto  
Keith A. Pesto,  
United States Magistrate Judge

Notice by U.S. Mail to:

Anthony Williams AY-6759  
S.C.I. Houtzdale  
P.O. Box 1000  
Houtzdale, PA 16698-1000

## Appendix-B

Order, Report and Recommendation  
U.S. District Court W.D. (PA)





IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ANTHONY WILLIAMS, :  
Plaintiff :  
v. : Case No. 3:18-cv-110-KRG-KAP  
DR. MUHAMMED NAJI, et al., :  
Defendants :

Order, Report and Recommendation

Order

Plaintiff's motion to proceed *in forma pauperis*, ECF no. 1, is denied.

Recommendation

If plaintiff does not pay the full filing fee within the time for filing objections I recommend that the complaint be dismissed for failure to prosecute.

Report

Plaintiff is an inmate serving a life sentence, currently at S.C.I. Houtzdale. Over the last quarter century plaintiff has submitted enough meritless or frivolous complaints and appeals that he is now subject to the Prison Litigation Reform Act's (Pub.L. No. 104-134, 110 Stat. 1321, April 26, 1996) three strikes rule. See e.g. Williams v. Pennsylvania Department of Corrections, Case No. 1:14-cv-1338-SHR-KM (M.D.Pa.) (collecting prior cases dismissed as frivolous or failing to state a claim); see also Williams v. Smithfield SCI, No. 13-4667 (3d Cir. May 13, 2014) (dismissing

(APPENDIX-B)

After de novo review of the record of this matter, the Report and Recommendation, and the objections thereto, the following order is entered:

AND NOW, this 27<sup>th</sup> day of October, 2018, it is

ORDERED that plaintiff's complaint is dismissed without prejudice for failure to pay the filing fee. The Report and Recommendation is adopted as the opinion of the Court. The Clerk shall mark this matter closed.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Kim R. Gibson", written over a horizontal line.

KIM R. GIBSON,  
UNITED STATES DISTRICT JUDGE

Notice by U.S. Mail to:

Anthony Williams AY-6759  
S.C.I. Houtzdale  
P.O. Box 1000  
Houtzdale, PA 16698-1000

(APPENDIX-B)

## Appendix—B

U. S. District Court For the Western District <sup>S</sup>Decision



IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ANTHONY WILLIAMS,  
Plaintiff

v.

DR. MUHAMMED NAJI, et al.,  
Defendants

:  
:  
: Case No. 3:18-cv-110-KRG-KAP  
:  
:

Report and Recommendation

Recommendation

Plaintiff's motions at ECF no. 5 and ECF no. 6, liberally construed as a motion to alter or amend the judgment under Fed.R.Civ.P. 59, should be denied.

Report

Plaintiff is an inmate serving a life sentence who because of the number of frivolous and meritless complaints he has filed is subject to the Prison Litigation Reform Act's three strikes rule, 28 U.S.C. §1915(g). Plaintiff has one action pending in this court, Williams v. Little, Case No. 3:18-cv-11-KRG-KAP (W.D.Pa.) which has recently been reviewed and cleared to proceed in part and in which he has been excused from the duty to prepay the filing fee because of a plausible claim that he is in imminent danger of serious physical injury.

This matter, however, was dismissed for failure to prepay the filing fee because there was no plausible claim of imminent danger of serious physical injury. Plaintiff's post-closing motions

(APPENDIX-B)

pursuant to Section 1915(g) the appeal from the judgment in Williams v. Smithfield S.C.I., Case No. 3:13-cv-137-KRG-KAP (W.D.Pa. October 29, 2013)).

As amended by Section 804(g) of the PLRA, 28 U.S.C. §1915(g) now bars a prisoner from proceeding *in forma pauperis* if he has while incarcerated, filed three or more discrete complaints or appeals in federal court that were dismissed as frivolous, malicious, or failing to state a claim. See Parker v. Montgomery County Correctional Facility, 870 F.3d 144, 146-47 (3d Cir.2017). The exception to this bar is for those complaints in which the prisoner "is under imminent danger of serious physical injury." See Abdul-Akbar v. McKelvie, 239 F3d 307, 312 (3d Cir.2001) (en banc).

Plaintiff has one action pending in this court, Williams v. Little, Case No. 3:18-cv-11-KRG-KAP (W.D.Pa.) in which a liberal construction of plaintiff's complaint makes it plausible enough to order service on plaintiff's claim that he is in imminent danger of serious injury from environmental tobacco smoke. Even the most liberal construction of this complaint fails to make a similar showing as to plaintiff's claims about his arthritis, breathing problems caused by a broken nose, and hepatitis C, all conditions that plaintiff states may date as far back as 1993. Plaintiff's conclusory statements about his health conditions makes it

## Appendix-C

( Decision petition for Rehearing )





BCO-038

January 22, 2020

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 19-2394

ANTHONY WILLIAMS, Appellant

v.

MUHAMMAD NAJI; ET AL.

(W.D. Pa. No. 3-18-cv-00110)

Present: AMBRO, GREENAWAY, JR., and BIBAS, Circuit Judges

Submitted is Appellant's "Petition for Rehearing or Rehearing En Banc," which the Court construes as a motion to reconsider this Court's December 19, 2019 Order denying Appellant's motion to proceed in forma pauperis and the Clerk's January 15, 2020 Order dismissing the appeal for failure to pay filing fees in the above-captioned case.

Respectfully,

Clerk

ORDER

The foregoing motion is denied.

By the Court,

s/Stephanos Bibas  
Circuit Judge

Dated: February 12, 2020

CJG/cc: Anthony Williams

(APPENDIX-C)

**UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

No. 19-2394

Anthony Williams v. Muhammad Naji, et al

(U.S. District Court No.: 3-18-cv-00110)

**ORDER**

Pursuant to Fed. R. App. P. 3(a) and 3rd Cir. LAR 3.3 and Misc. 107.1(a), it is

ORDERED that the above-captioned case is hereby dismissed for failure to timely prosecute insofar as appellant failed to pay the requisite fee as directed. It is

FURTHER ORDERED that a certified copy of this order be issued in lieu of a formal mandate.

For the Court,

s/ Patricia S. Dodszuweit  
Clerk

Dated: January 15, 2020

CJG/cc: Mr. Joshua Lewis  
Mr. Anthony Williams



A True Copy:

*Patricia S. Dodszuweit*

Patricia S. Dodszuweit, Clerk  
Certified Order Issued in Lieu of Mandate

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