

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604



Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

PLRA C.R. 3(b) FINAL ORDER

September 27, 2019

No. 19-1640	PETER GAKUBA, Plaintiff - Appellant v. CHARLES O'BRIEN, et al., Defendants - Appellees
Originating Case Information:	
District Court No: 1:12-cv-07296 Northern District of Illinois, Eastern Division District Judge Frederick J. Kapala	

⇒ The pro se appellant was DENIED leave to proceed on appeal in forma pauperis by the appellate court on August 5, 2019 and was given fourteen (14) days to pay the \$505.00 filing fee. The pro se appellant has not paid the \$505.00 appellate fee. Accordingly,

IT IS ORDERED that this appeal is **DISMISSED** for failure to pay the required docketing fee pursuant to Circuit Rule 3(b).

IT IS FURTHER ORDERED that the appellant pay the appellate fee of \$505.00 to the clerk of the district court. The clerk of the district court shall collect the appellate fees from the prisoner's trust fund account using the mechanism of *Section 1915(b)*. *Newlin v. Helman*, 123 F.3d 429, 433 (7th Cir. 1997).

↓ AUGUST 5, 2019 COURT ORDER

form name: c7_PLRA_3bFinalOrder(form ID: 142)

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ORDER

August 5, 2019

Before

WILLIAM J. BAUER, *Circuit Judge*
MICHAEL B. BRENNAN, *Circuit Judge*

No. 19-1640	PETER GAKUBA, Plaintiff - Appellant v. CHARLES O'BRIEN, et al., Defendants - Appellees
Originating Case Information:	
District Court No: 1:12-cv-07296 Northern District of Illinois, Eastern Division District Judge Frederick J. Kapala	

The following are before the court:

1. **AFFIDAVIT ACCOMPANYING MOTION FOR PERMISSION TO APPEAL IN FORMA PAUPERIS**, filed on July 15, 2019, by pro se Appellant Peter Gakuba.
2. **MOTION TO PROCEED ON APPEAL IFP**, filed on July 29, 2019, by pro se Appellant Peter Gakuba.

IT IS ORDERED that the motions are **DENIED**. The appellant shall pay the required docketing fee within 14 days or else this appeal will be dismissed for failure to prosecute.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS

Peter Gakuba (M-52946),

Plaintiff,

v.

Charles O'Brien, et al.

Defendants.

Case No. 12 C 7296

Appeal No. 19-1640

Judge Thomas M. Durkin

ORDER

Plaintiff's motion to proceed *in forma pauperis* on appeal [385] is denied. The Court certifies that the appeal is not taken in good faith. See 28 U.S.C. § 1915(a)(3). To proceed with his appeal, Plaintiff must either pay the appellate fee of \$505 within fourteen days or seek review of this Court's denial of his *in forma pauperis* request in the United States Court of Appeals for the Seventh Circuit within thirty days of the entry of this order. Plaintiff's failure to either pay the filing fee or seek review of this order may result in the Court of Appeals' dismissal of his appeal for failing to prosecute it. The Clerk is directed to send a copy of this order to Plaintiff and to the United States Court of Appeals for the Seventh Circuit. The Clerk shall also send a copy of this order and docket entries 380 and 388 to the trust fund officer at Robinson Correctional Center. The trust fund officer is directed to collect the filing fee as to Plaintiff's previous appeals as addressed below. The trust fund officer is reminded of his or her obligation to ensure payment of outstanding filing fees before releasing any money to Plaintiff for any other purpose. The Court also directs the Clerk to ensure that a copy of this order is mailed to each facility where Plaintiff is housed until the filing fees have been paid in full.

STATEMENT

Plaintiff has filed an interlocutory appeal of several of the Court's recent rulings (the sixth appeal filed by Plaintiff in this matter) and seeks leave to proceed *in forma pauperis*.

"An appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C.A. § 1915(a)(3). "[A]n appeal taken in 'good faith' is an appeal that, objectively considered, raises non-frivolous colorable issues." *Eiler v. City of Pana*, No. 14-CV-3063, 2014 WL 11395155, at *1 (C.D. Ill. Nov. 1, 2014) (collecting cases); *Lee v. Clinton*, 209 F.3d 1025, 1026 (7th Cir. 2000) (explaining that a finding of no good faith is comparable to a finding that an appeal would be frivolous). "An appeal is frivolous when the result is obvious or when the appellant's argument is wholly without merit." *Smeigh v. Johns Manville, Inc.*, 643 F.3d 554, 565 (7th Cir. 2011) (citation and internal quotation marks omitted).

The Court finds that the appeal is not taken in good faith as Plaintiff fails to articulate any non-frivolous colorable issues in his notice of appeal that merits review.

Accordingly, this Court finds no colorable issue meriting appellate review. Pursuant to § 1915(a)(3), the Court certifies that the appeal is not in good faith and that no appeal should be taken. Accordingly, Plaintiff's motion for leave to appeal *in forma pauperis* is denied. Plaintiff is ordered to remit to the Clerk of this Court the \$505 appellate fee within fourteen days of the date of this order. If Plaintiff fails to comply with this order, the Court of Appeals may dismiss his appeal. *Evans v. Ill. Dep't. of Corr.*, 150 F.3d 810, 812 (7th Cir. 1998). Alternatively, Plaintiff may file a motion in the Seventh Circuit contesting this Court's § 1915(a)(3) certification within thirty days of the entry of this order. Fed. R. App. P. 24(a)(5).

In addition, Plaintiff and the trust fund officer are advised that the PLRA requires a 20% monthly deduction for *each* case or appeal in which Plaintiff is allowed to proceed *in forma pauperis* or is ordered to pay the filing fee until he pays all filing fees in full. *See Bruce v. Samuels*, — U.S. —, 136 S. Ct. 627, 632-33 (2016). The obligation to collect and remit funds exceeding \$10 each month applies to *all* deposits to Plaintiff's account, including, for example, gifts from family and friends, not just income he earns at any institutional job. *See Lucien v. DeTella*, 141 F.3d 773 (7th Cir. 1998). Plaintiff has now been ordered to pay the filing fee in four appeals: 19-1536 and 19-1598 as to appeals in this matter, and 19-1537 and 19-1597 as to appeals in 13 C 50128. Plaintiff owes \$505 for each appeal. Thus, the trust account custodian is directed to deduct **20% + 20% + 20% = 20%, for a total of 80%**, each time his monthly balance exceeds \$10 until these filing fees are paid in full. Moreover, collections from his account follow Plaintiff, even if he is transferred to another facility.

Date: 6/11/2019

/s/ Thomas M. Durkin

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS

Peter Gakuba,

Plaintiff,

v.

Charles O'Brien, et al.,

Defendants.

Case No: 12 C 7296

Judge Frederick J. Kapala

ORDER

The court has reviewed the magistrate judge's report and recommendation ("R&R") [312] and agrees with the magistrate judge that plaintiff's motions for equitable relief [311] and emergency equitable relief [323] should be denied. In addition, plaintiff's motion to strike defendants' response [349] is denied.

STATEMENT

Plaintiff, Peter Gakuba, brings this action for injunctive and declaratory relief, claiming that defendants illegally obtained plaintiff's personal information and used it to arrest him in connection with the sexual assault of a juvenile. Before the court is plaintiff's objection to the magistrate judge's Report and Recommendation ("R&R") that injunctive and declaratory relief be denied because a favorable ruling would be inconsistent with his criminal conviction. See *Hoard v. Reddy*, 175 F.3d 531, 533 (7th Cir. 1999). For the reasons stated below, the court overrules plaintiff's objections to the R&R and adopts the magistrate judge's recommendation to deny, though on additional grounds than those mentioned in the R&R.

I. BACKGROUND

The relevant facts to this case have been oft-repeated in the many years that this case has existed and will only be briefly recited here. Plaintiff sued defendants on or about September 12, 2012 pursuant to § 1983 for damages and injunctive relief stemming from a 2006 accusation of kidnapping and rape that resulted in plaintiff's arrest. Plaintiff was charged with three counts of Aggravated Criminal Sexual Abuse, in violation of 720 ILCS 5/12-16(d), a Class 2 Felony, in the Winnebago County Circuit Court in *People of the State of Illinois v. Peter Gakuba*, Case No. 06 CF 4324. In 2012, Plaintiff filed this action, presenting claims against defendants for false arrest, illegal search of his hotel room and seizing his belongings, and abusing the judicial process by attempting to revoke his pretrial bond to dissuade him from filing a civil suit. Plaintiff was convicted on or about April 27, 2015, and sentenced to twelve years in prison on or about June 29, 2015.

On September 10, 2018, plaintiff filed a motion seeking equitable relief requesting that the

court prohibit the admission of “personal identifiable information”—i.e., his name and birthdate—obtained by the illegal search of his hotel room. On September 14, 2018, the magistrate judge issued an R&R denying plaintiff’s motion, to which plaintiff timely objected.¹ Thus, before the court are plaintiff’s objections to the R&R.

II. ANALYSIS

Pursuant to Rule 72(a) of the Federal Rules of Civil Procedure, the district court must “consider timely objections [to an R&R order] and modify or set aside any part of the order that is clearly erroneous or is contrary to law.” Fed. R. Civ. Proc. 72(a). Accordingly, because the motion concerns non-dispositive matters, this court will review the magistrate judge’s R&R under the “clearly erroneous” standard. See Retired Chicago Police Ass’n v. City of Chicago, 76 F.3d 856, 869 (7th Cir. 1996).

Plaintiff first objects to the R&R, arguing that because evidence was illegally retrieved by defendants he is entitled to equitable relief, i.e., that defendants may not use this evidence in this action. In addition to the reasons for denial set forth by the magistrate judge the court concludes there are alternative bases to deny plaintiff’s requests for injunctive and declaratory relief. Despite being filed as motions for “equitable relief,” both the objection and the underlying motions [311] [323] seeking to suppress evidence illegally obtained in this civil action are in actuality motions in limine to exclude evidence disguised as motions for equitable relief. In fact, plaintiff does not even mention Federal Rule of Civil Procedure 65 in his analyses supporting his motions. Motions in limine are simply not appropriate at this stage of litigation where discovery has yet to open. See Yager v. Empress Casino Hammond Corp., No. 97 C 3483, 1998 WL 67612, at *1 (N.D. Ill. Feb. 9, 1998) (rejecting a motion in limine as “premature” for being filed before defendant filed its answer). Our court’s standing order on motions in limine contemplates parties alerting the court to the intention to file motions in limine “not later than” with the submission of the final pretrial order. Indeed, we state pursuant to Local Rule 37.2 that motions in limine are to be filed as separate documents from the Final Pretrial Order, the form for which is located online. After discovery has taken place, the court will be in a better position to determine whether the defendants’ intention to admit the “personal identifiable information” (assuming they do intend to admit it) is proper.

Even if the court were to address the objection and motion as seeking injunctive relief, the court finds at this juncture that plaintiff would not be able to show that he has no adequate remedy at law—a threshold requirement for injunctive relief. Girl Scouts of Manitou Council, Inc. v. Girl Scouts of the U.S. of Am., Inc., 549 F.3d 1079, 1086 (7th Cir. 2008). That is because plaintiff does have an adequate remedy at law by way of a motion in limine to exclude the evidence. In the criminal context, there is little question that motions to suppress are an adequate remedy at law. Inmates of Attica Corr. Facility v. Rockefeller, 453 F.2d 12, 21 (2d Cir. 1971); Spanier v. Kane, 34 F. Supp. 3d 524, 529 (M.D. Pa. 2014); United States v. Douleh, 220 F.R.D. 391, 397 (W.D.N.Y.

¹ On September 28, 2018, plaintiff filed a motion for “emergency equitable relief,” seeking a temporary restraining order, preliminary and permanent injunctions, and declaratory judgment that all seek the same equitable relief as his previous motion. The magistrate judge transferred the motion directly to this court because of its overlap with the first motion on which the magistrate judge issues his R&R. The ruling on the instant motion resolves the subsequent filing by plaintiff.

2003). Where there is a lesser liberty interest at stake in a civil case than in a criminal case, the court concludes this principle applies to plaintiff's case with equal force. Thus, the court overrules plaintiff's objection as premature.

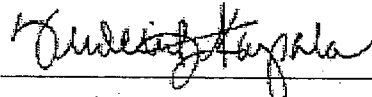
As a separate matter, plaintiff filed a motion on November 30, 2018 to strike defendants' response. The basis for plaintiff's motion is that defendants do not have standing to argue matters of law. Plaintiff provides no authority for this proposition, and the court sees no basis for it. The court denies this motion as well.

III. CONCLUSION

The court has reviewed the magistrate judge's R&R and agrees with its disposition. Accordingly, the objections from plaintiff are overruled and plaintiff's motions for equitable relief are denied. In addition, the court denies plaintiff's motion to strike defendants' response.

Date: 3/20/2019

ENTER:

A handwritten signature in dark ink, appearing to read "Frederick J. Kapala", is written over a horizontal line.

FREDERICK J. KAPALA

District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

Peter Gakuba,

Plaintiff,

v.

Charles O'Brien, et al.

Defendants.

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Case No: 1:12 CV 07296

Judge: Iain D. Johnston

REPORT AND RECOMMENDATION

It is this Court's Report and Recommendation that the plaintiff's motion for injunctive and declaratory relief [311] be denied because a favorable ruling would be inconsistent with his criminal conviction. *See Hoard v. Reddy*, 175 F.3d 531, 533 (7th Cir. 1999) ("A civil rights suit is no more a proper method of collateral attack on a conviction when an injunction is sought than when damages are sought," the latter of which "is blocked by *Heck v. Humphrey*, 512 U.S. 477 (1994)). Any objection to this Report and Recommendation is due 10/3/2018. Failure to object may constitute a waiver of objections on appeal. *See Provident Bank v. Manor Steel Corp.*, 882 F.2d 258, 260 (7th Cir. 1989).

Date: 9/14/2018

/s/ Iain D. Johnston
U.S. Magistrate Judge