

FILED: November 7, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-7252
(5:19-cv-03048-D)

MARC PIERRE HALL,

Plaintiff - Appellant,

v.

M. INCH, Director; ANGELA P. DUNBAR, Regional Director; WARDEN HOLLAND; WARDEN ANDREWS; ASSOCIATE WARDEN RUPSKA; ASSOCIATE WARDEN MYATT; CAPTAIN RULE; M. BREDENBERG, Legal Counsel; DR. REGINOLD HALL; DR. PATRICK CRAFT; DR. C. DUCHESNE; CAPTAIN WRIGHT; NURSE BORGES; DR. V. CAHILL; P.A. SHAW; HENRY MCMILLAN, Hospital Administrator; DR. SARAH BEYER; CENTRAL OFFICE MEDICAL DESIGNATOR; LIEUTENANT LOYD; LIEUTENANT MORE; K. MCKOY, Unit Manager; UNIT MANAGER LESLEY; T. BILLINGSLEA, Counselor; CASE MANAGER HOUK; CASE MANAGER HARRIS; ADMINISTRATIVE REMEDY COORDINATOR; MR. WARTZ, Disciplinary Hearing Officer; D. MARSIGLI, Physical Therapist; MR. PAYNE, Former Chief Physical Therapist; MR. CHOROSEVIC, Acting Chief Physical Therapist; CAPTAIN D. AVERY; BOP AGENCY; UNITED STATES; BRANDON WYCHE, Physician Assistant; HOSPITAL ADMINISTRATOR; COUNSELOR BROOKS; G. HALL, Physical Therapy,

Defendants - Appellees.

ORDER

Marc Pierre Hall applies under the Prison Litigation Reform Act (PLRA), 28 U.S.C. § 1915(b) (2012), to proceed on appeal without prepayment of fees. If an applicant has

Appendix A

had three actions or appeals dismissed on the ground that they were frivolous, malicious, or failed to state a claim upon which relief may be granted, the applicant may not proceed without prepayment of fees unless the applicant is under “imminent danger of serious physical injury.” 28 U.S.C. § 1915(g) (2012).

Hall has had three such prior dismissals: *See Hall v. City of Charlotte*, No. CA-97-186-3-MU (W.D.N.C. Aug. 29, 1997); *Hall v. United States*, No. 1:00-cv-987-UNA (D.D.C. May 5, 2000); *Hall v. Chater*, No. 3:98-cv-1940 (D. Conn. Jan. 28, 1999). We conclude that Hall has not adequately shown that he is under imminent danger of serious physical injury. We therefore deny the motion to proceed without prepayment of fees under the PLRA. We grant Hall’s motion to submit additional evidence in light of imminent danger of serious physical injury.

Entered at the direction of the panel: Chief Judge Gregory, Judge Floyd, and Judge Thacker.

For the Court

/s/ Patricia S. Connor, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:19-CT-3048-D

MARC PIERRE HALL,)
Plaintiff,)
v.) ORDER
M. INCH, et al.,)
Defendants.)

On February 15, 2019, Marc Pierre Hall (“Hall” or “plaintiff”), a federal inmate proceeding pro se, filed a 52-page complaint against 37 defendants [D.E. 1] and moved for leave to proceed in forma pauperis [D.E. 3]. On February 22, 2019, Magistrate Judge Jones granted Hall’s application to proceed in forma pauperis [D.E. 14]. Hall has filed a tsunami of motions [D.E. 5, 6, 15, 19, 20, 22, 24, 25, 28, 29, 32, 34–36].¹ Hall also has filed numerous discovery materials, exhibits, and supplements to his complaint. See [D.E. 7–13, 16–18, 21, 23, 26–27, 30–31, 33, 37]. As explained below, the court vacates Magistrate Judge Jones’s order granting Hall’s in forma pauperis action, reviews all of Hall’s filings, and dismisses the action under 28 U.S.C. § 1915(g).

Hall is incarcerated at the United States Penitentiary in Hazelton, West Virginia. See Compl [D.E. 1] 3. Hall has been at Hazelton since at least April 18, 2018. See [D.E. 18] 16–20. However, the allegations of Hall’s complaint arose at the Federal Correctional Complex in Butner, North Carolina (“FCI-Butner”). Hall alleges that

[b]etween the dates 5.24.16 to present, defendants . . . did with disregard for health

¹ To the extent Hall seeks leave to amend or otherwise supplement his complaint, the court grants the motions and reviews all of Hall’s filings.

Appendix B

and safety either in deliberate indifference to established laws that violated plaintiff's constitutional rights under either the 1, 5, 8 amendments while acting outside the scope of their offices or employment; or had acts and omissions in negligence cognizable under the FTCA and state tort laws, that directly or indirectly caused or contributed to plaintiff's permanence physical injuries and constitutional injuries, that consisted of atypical hardships and/or a wanton infliction of pain and suffering and/or by the use of injurious policy, rule, regulation, custom or usage thereof which injured plaintiff and/or the failure to provide individualized needs under blanket policy for standard of care; and that consisted of conspiracy against civil rights.

Compl. [D.E. 1] 13. Specifically, Hall claims that "restricting plaintiff's verbal speech to physical therapist D. Marsigli and G. Hall . . . between the dates of 8/26/17 - 8/29/1," "extremely cold cells[]" and "lack of proper bedding" in January 2018, "failing to provide accessible cells and auxiliary devices in unit cells . . . between the dates of 5/24/16 - 1/12/18," and "chronic pain between the dates of 1/24/18 - 3/16/18[.]" Id. at 20–27, 34; see [D.E. 16] 2–29; [D.E. 17] 2; [D.E. 18]. Hall seeks millions of dollars in damages and injunctive relief. See Compl. [D.E. 1] 51–52.

The Prison Litigation Reform Act's ("PLRA") three-strikes provision allows the court to dismiss a prisoner's action if the prisoner has not paid his filing fees and "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." 28 U.S.C. § 1915(g); see Blakely v. Wards, 738 F.3d 607, 610–11 (4th Cir. 2013) (en banc); Tolbert v. Stevenson, 635 F.3d 646, 650–51 (4th Cir. 2011); Green v. Young, 454 F.3d 405, 407–10 (4th Cir. 2006). Hall has used his three strikes. See Order, Hall v. United States, No. 3:06-cv-00909-PCD, [D.E. 12] 2 (D. Conn. July 14, 2006) (collecting cases). Therefore, the court vacates Magistrate Judge Jones's order of February 22, 2019, authorizing Hall to proceed without prepayment of the fees in this action [D.E. 14].

To avoid dismissal and proceed without prepayment of the filing fee, Hall must plausibly

allege that he is under imminent danger of serious physical injury. See 28 U.S.C. § 1915(g). This “exception [to the three-strikes rule] focuses on the risk that the conduct complained of threatens continuing or future injury, not on whether the inmate deserves a remedy for past misconduct.” Martin v. Shelton, 319 F.3d 1048, 1050 (8th Cir. 2003); see Chase v. O’Malley, 466 F. App’x 185, 186 (4th Cir. 2012) (per curiam) (unpublished); Smith v. Wang, 370 F. App’x 377, 378 (4th Cir. 2010) (per curiam) (unpublished); Smith v. Mayes, 358 F. App’x 411, 411 (4th Cir. 2009) (per curiam) (unpublished); Johnson v. Warner, 200 F. App’x 270, 272 (4th Cir. 2006) (per curiam) (unpublished). Vague, speculative, or conclusory allegations are insufficient to invoke this exception. See Johnson, 200 F. App’x at 272. Rather, the inmate must make “specific fact allegations of ongoing serious physical injury, or of a pattern of misconduct evidencing the likelihood of imminent serious physical injury.” Martin, 319 F.3d at 1050. Hall fails to plausibly allege that he is presently under imminent danger of serious physical injury. Thus, Hall has not made a colorable showing that this action should proceed under the exception to the PLRA’s three-strikes rule.

As for Hall’s motion for appointment of counsel, no right to counsel exists in civil cases absent “exceptional circumstances.” Whisenant v. Yuam, 739 F.2d 160, 163 (4th Cir. 1984), abrogated in part on other grounds by Mallard v. U.S. Dist. Court, 490 U.S. 296 (1989); see Cook v. Bounds, 518 F.2d 779, 780 (4th Cir. 1975). The existence of exceptional circumstances “hinges on [the] characteristics of the claim and the litigant.” Whisenant, 739 F.2d at 163. The facts of this case and Hall’s abilities do not present exceptional circumstances. Accordingly, the court denies Hall’s motion for appointed counsel [D.E. 5].

As for Hall’s motion for a preliminary injunction, the court has considered the motion under the governing standard. See Fed. R. Civ. P. 65; Winter v. Natural Res. Def. Council, Inc., 555 U.S.

7, 20 (2008); Real Truth About Obama, Inc. v. FEC, 575 F.3d 342, 346 (4th Cir. 2009), vacated on other grounds, 559 U.S. 1089 (2010), reissued in relevant part, 607 F.3d 355 (4th Cir. 2010) (per curiam); U.S. Dep't of Labor v. Wolf Run Mining Co., 452 F.3d 275, 281 n.1 (4th Cir. 2006). The court denies the motion as meritless.

In sum, the court VACATES the order permitting plaintiff to proceed without prepayment of the fees in this action [D.E. 14]. The court GRANTS IN PART plaintiff's motions [D.E. 7-13, 16-18, 21, 23, 26-27, 30-31, 33, 37] only to the extent plaintiff seeks leave to amend or otherwise supplement his complaint. In all other respects, the court DENIES the motions because the motions lack merit and DISMISSES the action under 28 U.S.C. § 1915(g). The clerk shall close the case.

SO ORDERED. This 21 day of August 2019.

4-Dever
JAMES C. DEVER III
United States District Judge

FILED: February 12, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-7252

(5:19-cv-03048-D)

MARC PIERRE HALL

Plaintiff - Appellant

v.

M. INCH, Director; ANGELA P. DUNBAR, Regional Director; WARDEN HOLLAND; WARDEN ANDREWS; ASSOCIATE WARDEN RUPSKA; ASSOCIATE WARDEN MYATT; CAPTAIN RULE; M. BREDENBERG, Legal Counsel; DR. REGINOLD HALL; DR. PATRICK CRAFT; DR. C. DUCHESNE; CAPTAIN WRIGHT; NURSE BORGES; DR. V. CAHILL; P.A. SHAW; HENRY MCMILLAN, Hospital Administrator; DR. SARAH BEYER; CENTRAL OFFICE MEDICAL DESIGNATOR; LIEUTENANT LOYD; LIEUTENANT MORE; K. MCKOY, Unit Manager; UNIT MANAGER LESLEY; T. BILLINGSLEA, Counselor; CASE MANAGER HOUK; CASE MANAGER HARRIS; ADMINISTRATIVE REMEDY COORDINATOR; MR. WARTZ, Disciplinary Hearing Officer; D. MARSIGLI, Physical Therapist; MR. PAYNE, Former Chief Physical Therapist; MR. CHOROSEVIC, Acting Chief Physical Therapist; CAPTAIN D. AVERY; BOP AGENCY; UNITED STATES; BRANDON WYCHE, Physician Assistant; HOSPITAL ADMINISTRATOR; COUNSELOR BROOKS; G. HALL, Physical Therapy

Defendants - Appellees

Appendix C

ORDER

Upon consideration of appellant's petition for hearing or rehearing en banc, which the court construes as a motion to reconsider the court's denial of the motion to proceed without prepayment of fees, the court denies the motion.

Entered at the direction of Judge Floyd with the concurrence of Judge Thacker. Chief Judge Gregory voted to grant the motion.

For the Court

/s/ Patricia S. Connor, Clerk