

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DEC 12 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

EMMANUEL ADEWALE ADEYINKA,

Plaintiff-Appellant,

v.

BRADY BARRS; et al.,

Defendants-Appellees.

No. 19-35772

D.C. No. 3:19-cv-00943-YY
District of Oregon, Portland

ORDER

Before: WALLACE, CANBY, and TASHIMA, Circuit Judges.

The district court certified that this appeal is frivolous and revoked appellant's in forma pauperis status. *See* 28 U.S.C. § 1915(a). On September 24, 2019 the court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Upon a review of the record, the response to the court's September 24, 2019 order, and the opening brief received on November 26, 2019, we conclude this appeal is frivolous. We therefore deny appellant's motions to proceed in forma pauperis (Docket Entry Nos. 7 & 8) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

All other pending motions are denied as moot.

DISMISSED.

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

EMMANUEL ADEYINKA,

Plaintiff,

Case No. 3:19-cv-00943-YY

v.

ORDER

BRADY BARRS, ET AL.

Defendants.

On July 19, 2019, the court issued an Order to Show Cause why this case should not be dismissed for failure to state a claim for relief, failure to establish federal subject matter jurisdiction, and failure to establish the court's in personam jurisdiction over the defendants. ECF #7. On August 15, 2019, plaintiff filed a document entitled "Amendment Claim"; however, it fails to cure the defects specifically outlined in the court's Order to Show Cause. Therefore, this case is dismissed without prejudice.

IT IS SO ORDERED.

Dated this 20 of August, 2019.



Michael W. Mosman
Chief United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

EMMANUEL ADEYINKA,

Plaintiff,

Case No. 3:19-cv-00943-YY

v.

JUDGMENT

BRADY BARRS, ET AL.

Defendants.

Based on the Order [12] issued in this case, it is adjudged that this case is DISMISSED without prejudice.

Dated this 20 day of August, 2019.



Michael W. Mosman
Chief United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

EMMANUEL ADEWALE
ADEYINKA,

Plaintiff - Appellant,

v.

BRADY BARRS; TEXAS
DEPARTMENT OF CRIMINAL
JUSTICE; ARMSTRONG; C.
AQUILERA,

Defendants - Appellees.

No. 19-35763

D.C. No. 3:19-cv-00943-YY
U.S. District Court for Oregon,
Portland

TIME SCHEDULE ORDER

The parties shall meet the following time schedule:

Mon., November 4, 2019 Appellant's opening brief and excerpts of record shall be served and filed pursuant to FRAP 31 and 9th Cir. R. 31-2.1.

Failure of the appellant to comply with the Time Schedule Order will result in automatic dismissal of the appeal. See 9th Cir. R. 42-1.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Holly Crosby
Deputy Clerk
Ninth Circuit Rule 27-7

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-20588
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

March 25, 2019

Lyle W. Cayce
Clerk

EMMANUEL ADWALE ADEYINKA,

Plaintiff-Appellant

v.

HOUSTON TEXAS DEPARTMENT OF PUBLIC SAFETY,

Defendant-Appellee

Appeals from the United States District Court
for the Southern District of Texas
USDC No. 4:18-CV-2753

Before JONES, ELROD, and ENGELHARDT, Circuit Judges.

PER CURIAM:*

Emmanuel Adwale Adeyinka moves for leave to proceed in forma pauperis (IFP) in his appeal from the dismissal of his 42 U.S.C. § 1983 complaint as malicious pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). His “Motion of Content,” which does not seek any relief from this court, is DENIED. By seeking leave to proceed IFP in this court, Adeyinka is challenging the district court’s denial of leave to proceed IFP and certification that his appeal would

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 18-20588

be frivolous and not taken in good faith. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997). Our inquiry into an appellant's good faith "is limited to whether the appeal involves legal points arguable on their merits (and therefore not frivolous)." *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (internal quotation marks and citation omitted).

In his brief and other submissions to this court, Adeyinka does not challenge the district court's reasons for dismissing his complaint as malicious or denying him leave to proceed IFP on appeal. Even pro se litigants must brief arguments in order to preserve them. *Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993). By failing to identify any error in the district court's analysis, it is the same as if Adeyinka had not appealed the dismissal of his complaint as frivolous. *See Brinkmann v. Dallas Cty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987). The appeal therefore lacks arguable merit and is frivolous. *See Howard*, 707 F.2d at 220.

Accordingly, Adeyinka's request for leave to proceed IFP on appeal is DENIED, and the appeal is DISMISSED as frivolous. *See Baugh*, 117 F.3d at 202 n.24; *see also* 5TH CIR. R. 42.2.

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 18-3696

EMMANUEL ADEYINKA,
Appellant

v.

HOWARD S. LOMAX

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(E.D. Pa. Civil Action No. 2-18-cv-04897)
District Judge: Honorable Petrese B. Tucker

Submitted Pursuant to Third Circuit LAR 34.1(a)
December 23, 2019

Before: AMBRO, GREENAWAY, JR. and PORTER, Circuit Judges
(Opinion filed: January 7, 2020)

OPINION*

PER CURIAM

Emmanuel Adeyinka, proceeding pro se, appeals an order of the United States District Court for the Eastern District of Pennsylvania dismissing his complaint. For the

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

reasons that follow, we will affirm the judgment of the District Court.

Adeyinka filed a complaint against Howard Lomax, a police officer, and the City of Philadelphia in 2018. Although the complaint is unclear, it appears to arise out of Adeyinka's arrest on January 16, 2008, and his confinement related to two criminal cases brought against him in Philadelphia Municipal Court. Adeyinka refers to the state court criminal dockets as the basis for his complaint and claims cruel and unusual punishment based on, among other things, the presence of vermin, flies, and mildew in prison. He also refers to 18 U.S.C. § 1001 and "Miranda Rights." Adeyinka seeks a total of \$5,400,000 in compensatory and punitive damages.

The District Court screened the complaint pursuant to 28 U.S.C. § 1915(e)(2)(B). The District Court dismissed any claims under 18 U.S.C. § 1001, a criminal statute prohibiting certain false statements, as legally baseless because the statute does not provide a basis for civil liability. The District Court also ruled that Adeyinka does not state a claim for relief under 42 U.S.C. § 1983 because he had not stated what Lomax or the City of Philadelphia did to violate his rights. The District Court decided that, even if it construed Adeyinka's complaint to raise claims against Lomax based on his 2008 arrest and the City based on the conditions of his confinement, his claims fail because they are barred by Pennsylvania's two-year statute of limitations.

The District Court also ruled that, even if not time-barred, Adeyinka had not stated a claim based on the conditions of his confinement because his allegations did not suggest that he was exposed to an unconstitutional threat to his life or safety. In addition,

the District Court stated that Adeyinka did not identify a municipal policy or custom that would establish a basis for liability against the City of Philadelphia. The District Court ruled that amendment of the complaint would be futile because the claims are time-barred and dismissed the complaint as frivolous and for failure to state a claim for relief. This appeal followed.

We have jurisdiction pursuant to 28 U.S.C. § 1291. Our standard of review of the District Court's dismissal of the complaint is plenary. Mitchell v. Horn, 318 F.3d 523, 530 (3d Cir. 2003); Allah v. Seiverling, 229 F.3d 220, 223 (3d Cir. 2000).

Adeyinka's arguments on appeal are for the most part unclear. He appears to agree that claims for false arrest and false imprisonment are time-barred, see Appellant's Brief at 6-7, and to contend that his conditions of confinement violated his constitutional rights. He also states that he was not read his rights under Miranda v. Arizona, 384 U.S. 436 (1966).

We agree with the District Court that Pennsylvania's two-year statute of limitations applies to Adeyinka's § 1983 claims, that any claims for false arrest and false imprisonment accrued in 2008, when Adeyinka was detained pursuant to legal process, and that these claims are time-barred. See 42 Pa. Cons. Stat. § 5524; Wallace v. Kato, 549 U.S. 384, 387, 396 (2007). A claim based on Miranda is similarly time-barred.

Adeyinka's conditions of confinement claims also appear to be time-barred for substantially the reasons stated by the District Court, and even if they are not, Adeyinka fails to state a plausible constitutional claim based on those conditions in his complaint.

See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). He has not elaborated on the conditions of his confinement on appeal or shown that the District Court should have allowed him to amend his complaint.

To the extent Adeyinka seeks to bring a malicious prosecution claim, see Appellant's Brief at 13, he has shown no error in the District Court's ruling that such a claim is not cognizable because his convictions for indecent exposure have not been vacated, or its ruling that a claim based on charges that were withdrawn in 2009 are time-barred. The state court dockets reflect that partial expungement orders have been issued in Adeyinka's criminal cases since he filed his brief, but there is no indication that these orders affect these rulings.

Accordingly, we will affirm the judgment of the District Court.

ENTERED

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

August 15, 2018

David J. Bradley, Clerk

EMMANUEL ADEYINKA,

§

Plaintiff,

§

v.

§

CIVIL ACTION NO. H-18-2782

§

TEXAS DEPARTMENT OF JUSTICE,
et al.,

§

§

§

Defendants.

§

MEMORANDUM OPINION AND ORDER

The plaintiff, Emmanuel Adeyinka, has filed a pro se Complaint for Violation of Civil Rights against the Texas Department of Justice, the City of Houston, the Parole Board, and others ("Complaint") (Docket Entry No. 1), alleging that he has been wrongfully required to register as a sex offender and participate in a sex offender monitoring program that requires him to take a polygraph as a condition of his parole. Because Adeyinka has not paid the filing fee, the court is required to scrutinize the claims and dismiss the Complaint, in whole or in part, if it determines that the Complaint "is frivolous or malicious; [or] fails to state a claim upon which relief may be granted." 28 U.S.C. § 1915(e)(2)(B). After considering all of the pleadings, the court concludes that this case must be dismissed for the reasons explained below.

I. Discussion

Court records reflect that Adeyinka was sentenced to two years in state prison in 2017 following his conviction for criminal retaliation. See Adeyinka v. Davis, Civil No. H-18-2157 (S.D. Tex. June 27, 2018) (Order of Dismissal, Docket Entry No. 3, p. 1). Following his release on parole Adeyinka claims that he has been required to register as a sex offender and to participate in a sex offender monitoring program because he has prior convictions from Philadelphia for indecent exposure (Court Summary, attached to Complaint, Docket Entry No. 1, p. 7). Arguing that the conditions of his release on parole are unconstitutional, Adeyinka now seeks \$1,777,777.00 in damages for his emotional distress and mental anguish (Complaint, Docket Entry No. 1, p. 5).

Under the rule in Heck v. Humphrey, 114 S. Ct. 2364, 2372 (1994), a civil rights plaintiff cannot obtain money damages based on allegations of "unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid," without first proving that the challenged conviction or sentence has been "reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determinations, or called into question by a federal court's issuance of a writ of habeas corpus [under] 28 U.S.C. § 2254." The rule in Heck applies to complaints about the fact or duration of parole. See Littles v. Board of

Pardons and Paroles Division, 68 F.3d 122, 123 (5th Cir. 1995); see also Jackson v. Vannoy, 49 F.3d 175, 177 (5th Cir. 1995).

Adeyinka does not allege facts showing that the challenged parole decision has been set aside or invalidated. Absent a showing that the disputed parole decision has been invalidated or set aside, Adeyinka's claim for money damages is precluded by the rule in Heck. See Littles, 68 F.3d at 123. As a result, the Complaint must be dismissed with prejudice for failure to state a claim upon which relief can be granted under § 1983. See Johnson v. McElveen, 101 F.3d 423, 424 (5th Cir. 1996) (explaining that claims barred by Heck are "dismissed with prejudice to their being asserted again until the Heck conditions are met"). Accordingly, this case will be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B).

II. Warning

The court notes that Adeyinka has filed at least thirteen lawsuits in this district within the past three months. Of these lawsuits, at least four others have been dismissed as frivolous, malicious, or for failure to state an actionable claim. See Adeyinka v. Harris County, et al., Civil No. H-18-1616 (S.D. Tex. May 18, 2018) (frivolous); Adeyinka v. Harris County Jail, et al., Civil No. H-18-1782 (S.D. Tex. July 13, 2018) (failure to state a claim); Adeyinka v. Harris County Jail, et al., Civil No. H-18-2161 (S.D. Tex. July 27, 2018) (frivolous); Adeyinka v. Houston Texas Department of Public Safety, Civil No. H-18-2753 (S.D. Tex. Aug. 15, 2018) (malicious).

Although Adeyinka is not a prisoner who is subject to the three-strikes rule found in the Prison Litigation Reform Act (the "PLRA"), 28 U.S.C. § 1915(g), which places restrictions on a litigant's eligibility to proceed in forma pauperis once he has three dismissals for filing frivolous or malicious lawsuits, district courts have inherent authority to sanction abusive litigants by imposing monetary penalties and other restrictions on their ability to file suit. See Chambers v. NASCO, Inc., 111 S. Ct. 2123, 2131-38 (1991); In re Stone, 986 F.2d 898, 902 (5th Cir. 1993) (courts possess the inherent power "to protect the efficient and orderly administration of justice," which includes "the power to levy sanctions in response to abusive litigation practices") (citations omitted). Because Adeyinka has now incurred at least four dismissals that would ordinarily disqualify a prisoner from eligibility for leave to proceed in forma pauperis, he is warned that further frivolous lawsuits may result in sanctions -- including monetary penalties and restrictions on his ability to file lawsuits in this court -- for abusing scarce judicial resources.

III. Conclusion and Order

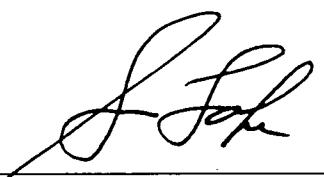
Based on the foregoing, the court ORDERS as follows:

1. The Complaint for Violation of Civil Rights filed by Emmanuel Adeyinka (Docket Entry No. 1) is DISMISSED with prejudice under 28 U.S.C. § 1915(e)(2)(B) for failure to state an actionable claim.

2. Adeyinka is **WARNED** that he may face sanctions, including monetary penalties and restrictions on his ability to file lawsuits, if he continues to file meritless lawsuits in federal courts.

The Clerk is directed to provide a copy of this Memorandum Opinion and Order to the plaintiff.

SIGNED at Houston, Texas, on this 15th day of August, 2018.



SIM LAKE
UNITED STATES DISTRICT JUDGE