

Case No. 20-6120

SUPREME COURT OF THE UNITED STATES

JOHNNY TIPPINS,

Plaintiff-Appellant,

v.

PATRICIA CARUSO; BARBARA MEAGHER; JOHN DOES;
JANE DOES; GEORGE KUBIN; JAMES C. KELLY; BLAINE LAFLER, Warden,

Defendants-Appellees.

On Appeal from United States Circuit Court
for the Sixth Circuit,
Case No. 17-1508

**DEFENDANTS-APPELLEES GEORGE KUBIN AND JAMES C. KELLY'S
MOTION TO ENJOIN PLAINTIFF-APPELLANT FROM FUTURE FILINGS WITHOUT
LEAVE OF COURT**

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PERTINENT CASE BACKGROUND

This case stems from Tippins' 42 U.S.C. § 1983 claim that his constitutional rights under the Eighth Amendment of the United States Constitution were violated when he was forced to drink contaminated water while incarcerated. (R.E. 1, Complaint, Page ID # 1-13).

Tippins has unsuccessfully pursued his claim at every level imaginable, from the district court, and then on direct appeal and collateral review. In October 2015, having determined that this action fell outside the three-year limitation period under M.C.L. 600.5805(10), the district court followed the magistrate judge's recommendation and dismissed Tippins' claims with prejudice. (R.E. 49, Order 10/14/15, Page ID # 399-405).¹

Tippins brought several post-judgment motions, including a motion for oral argument (R.E. 52, Page ID # 409-410), a motion for relief from judgment (R.E. 53, Page ID # 411-423), and another motion to amend his complaint (R.E. 55, Page ID # 443-451), all of which the district court denied. (R.E. 72, Opinion and Order,

¹ More specifically, the district court determined that the applicable statute of limitations was three years under M.C.L. 600.5805(10) because there is no applicable "statute of limitations governing § 1983 actions, [and therefore] 'federal courts must borrow the statute of limitations governing personal injury actions in the state in which the section 1983 action was brought.'" *Wolfe v. Perry*, 412 F.3d 707, 713-714 (6th Cir. 2005) (quoting *Banks v. City of Whitehall*, 344 F.3d 550, 553 (6th Cir. 2003)). Under federal law, the limitations period "begins to run when the plaintiff knows or has reasons to know that the act providing the basis for his or her injury has occurred." *Collyer v. Darling*, 98 F.3d 211, 220 (6th Cir. 1996). Consequently, the district court agreed with the magistrate and held that all Tippins' claims were barred because "Tippins knew that he suffered an injury no later than 2007," but did not file his first complaint until seven years later, in 2014. (*Id.*, Page ID # 402-403). A corresponding judgment was entered. (RE 50, Judgment, Page ID # 406).

2/16/17, Page ID # 666-670). The district court further enjoined Tippins from further filings without leave of court. (*Id.*). Tippins subsequently filed a motion for leave in which he asked the district court to reopen the time for him to file a notice of appeal. (R.E. 74, Application Pursuant to Court Order Seeking Leave to File, 4/17/17, Page ID # 676-684). The district court reopened the time to appeal the February 16, 2017 Order until May 4, 2017, and Tippins accordingly filed a notice of appeal within that time frame. (R.E. 75, Order Reopening the Time to Appeal the Court's Order, Page ID # 687; R.E. 76, Notice of Appeal, 5/1/17, Page ID # 689).

Ultimately, the Sixth Circuit affirmed the district court's dismissal of the claim on March 21, 2018. (R.E. 23-2, 3/21/18 Opinion).² Tippins petitioned for rehearing, which the court denied, having concluded that it "did not misapprehend or overlook any point of law or fact when it issued the March 21, 2018, order," Fed. R. App. P. 40(a). (R.E. 25-2, 4/24/18 Order). Tippins then unsuccessfully petitioned for a writ of certiorari (10/1/18 Entry on United States Supreme Court Docket No. 17-9272).

Next, Tippins filed his first in a series of three vexatious motions to recall the mandate in the court of appeals. The court denied Tippins' motion on the grounds that he failed to demonstrate exceptional circumstances warranting such relief. (R.E. 37, 7/9/20 Order). Nevertheless, immediately after the court denied his initial

² For a complete statement of the pertinent procedural history, see the attached 6/10/2020 Response to Tippins' First Motion to Recall the Mandate. (R.E. 35) (**Exhibit A**). To further illustrate the redundancy of these motions, we have also included the 8/12/20 Response to Tippins' Second Motion to Recall the Mandate. (R.E. 39) (**Exhibit B**).

motion to recall the mandate, Tippins unsuccessfully filed a virtually identical motion. (R.E. 40, 8/19/20 Order). Naturally, Tippins immediately filed a third motion to recall the mandate on essentially the same grounds the court had repeatedly rejected. (R.E. 42, 8/28/20 Motion). At this point, realizing they had to repeatedly defend against frivolous and vexatious motions with no end in sight, Kubin and Kelly moved to enjoin Tippins from future filings in the Sixth Circuit without leave of court. (R.E. 44-1, 9/3/2020 Motion).

On October 1, 2020, the Sixth Circuit denied Tippins's third motion to recall the mandate on the grounds that he "failed to demonstrate exceptional circumstances warranting recalling the mandate," given that he was "merely attempting to reargue [the] court's determination that his complaint was untimely, which is not a basis for recalling the mandate." (R.E.47-1, 10/1/2020 Order, p 2). The court, in turn, granted Kubin and Kelly's motion to enjoin Tippins from future filings without leave of court. (*Id.*)

Tippins now, yet again, petitions for certiorari.

MOTION STANDARD

This Court is authorized under 28 U.S.C. 1651(a) to enjoin litigants who abuse the court system by harassing their opponents. See also *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43-46 (1991) (there exists no constitutional right of access to the courts to prosecute an action that is frivolous or malicious).

ARGUMENT

Tippins continues to demonstrate a pattern of making vexatious filings, with no end in sight, evidenced most recently by his filing of the instant petition for Certiorari which has no merit.

“There is nothing unusual about imposing prefiling restrictions in matters with a history of repetitive or vexatious litigation.” *Feathers v. Chevron U.S.A., Inc.*, 141 F.3d 264, 269 (6th Cir. 1998). Thus, “it is permissible to require one who has abused the legal process to make a showing that a tendered [action] is not frivolous or vexatious before permitting it to be filed.” *Tropf v. Fid Nat Title Ins Co.*, 289 F.3d 929, 940 (6th Cir. 2002), quoting *Ortman v. Thomas*, 99 F.3d 807, 811 (6th Cir. 1996); see *Marbly v Several Known & Unknown Named Employees of FBI*, 72 F. App’x 387, 388 (6th Cir. 2003) (same).³

It is abundantly clear that Tippins does not seek meritorious collateral relief in this Court or the lower courts. Instead, having filed three meritless and regurgitated motions to recall the mandate, Tippins “has diverted [this Court’s] attention and resources from those that are brought in good faith and constitutes an abuse of the legal system.” *Wrenn*, 50 F. 3d at *3. His actions thus demonstrate that he will continue, as he has, to file vexatious pleadings that will do nothing but hinder the Court’s administration of justice.

³ See also *Lau v. Meddaugh*, 229 F.3d 121, 123 (2d Cir. 2000) (“[t]he district courts have the power and the obligation to protect the public and the efficient administration of justice from individuals who have a history of litigation entailing vexation, harassment and needless expense to other parties and an unnecessary burden on the courts and their supporting personnel”).

RELIEF

Defendants-Appellees George Kubin and James Kelly respectfully request that this Honorable Court enter an order enjoining Tippins from submitting further filings without leave of Court.

Respectfully submitted,

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Dated: November 24, 2020

CERTIFICATE OF SERVICE

MARY MASSARON, attorney with the law firm of PLUNKETT COONEY, being first duly sworn, deposes and says that on the 24th day of November, 2020, she caused a copy of this document to be served upon all parties of record, and that such service was made electronically upon each counsel of record so registered with the United States Supreme Court, and via U.S. Mail to any counsel not registered to receive electronic copies from the court, by enclosing same in a sealed envelope with first class postage fully prepaid, addressed to the above, and depositing said envelope and its contents in a receptacle for the U.S. Mail.

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Dated: November 24, 2020

DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS

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Complaint	3/4/14	1	1-13
Order	10/14/15	49	399-405
Judgment	10/14/15	50	406
Motion for Oral Argument	11/2/15	52	409-410
Motion for Relief from Judgment	11/2/15	53	411-426
Second Motion to Amend Complaint	1/8/16	55	443-453
Opinion and Order	2/16/17	72	666-670
Application Pursuant to Court Order Seeking Leave to File	4/17/17	74	676-684
Order Reopening the Time to Appeal the Court's Order	4/20/17	75	687
Notice of Appeal	5/1/17	76	689

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