

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

December 7, 2020

No. 19-20420
Summary Calendar

Lyle W. Cayce
Clerk

RAYMOND E. CARR,

Plaintiff—Appellant,

versus

SHERIFF ED GONZALEZ, *Chief*, HARRIS COUNTY SHERIFF'S DEPARTMENT, *in his individual and official capacity*; PROBABLE CAUSE JUDGE, *in his individual and official capacity*; UTMB MEDICAL DEPARTMENT, *in its individual and official capacity*; ISS FACILITY/INTERNATIONAL AIRLINE SECURITY, *in its individual and official capacity*; NEW HOPE HOUSING, *in its individual and official capacity*; ART ACEVEDO, *Chief*, HOUSTON POLICE DEPARTMENT, *in his individual and official capacity*; WELLS FARGO BANK, *in its individual and official capacity*; KRASH CABIN MANAGEMENT, *in its individual and official capacity*; IMPERIO USED CAR DEALERSHIP; TEXAS POST MASTER GENERAL, *in his individual and official capacity*; HOUSTON POLICE DEPARTMENT; UNITED STATES POSTAL SERVICE,

Defendants—Appellees,

CONSOLIDATED WITH

No. 19-20621

No. 19-20420

c/w No. 19-20621

LORD OF THE STREETS RAYMOND E. CARR,

Plaintiff—Appellant,

versus

CIVIL RIGHTS PROJECT; LONE STAR LEGAL AID; BEACON LAW CENTER; 7031 KOLL CENTER; METROPOLITAN TRANSIT AUTHORITY; U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION; HARRIS COUNTY HOSPITAL DISTRICT; BIOMAT PLASMA CENTER; COORDINATED ACCESS HOUSING; TEXAS HEALTH AND HUMAN SERVICES COMMISSION; HOUSTON COMMUNITY COLLEGE; ASSURANCE WIRELESS; FBI AGENCY,

Defendants—Appellees.

Appeals from the United States District Court
for the Southern District of Texas
USDC No. 4:19-CV-1754
USDC No. 4:18-CV-3551

Before WIENER, SOUTHWICK, and DUNCAN, *Circuit Judges*.

PER CURIAM:*

Raymond E. Carr appeals the district court's dismissal without prejudice of *Carr v. Gonzalez*, No. 4:19-CV-1754, as barred by the 28 U.S.C. § 1915(g) bar. *See* § 1915(g). He also appeals the district court's denial of his motion to reopen or amend the dismissal with prejudice of *Carr v. Civil Rights Project*, No. 4:18-CV-3551, for want of prosecution. However, he has abandoned, by failing to brief, the only cognizable issues on appeal. *See Yohey*

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 19-20420

c/w No. 19-20621

v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993); *Brinkmann v. Dallas Cnty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987). The judgments of the district court are therefore AFFIRMED.

Carr's motions to supplement the record reference events that post-date the filing of these appeals. As those facts cannot be considered for the first time on appeal, those motions are DENIED. *See Theriot v. Parish of Jefferson*, 185 F.3d 477, 491 n.26 (5th Cir. 1999); *Leverette v. Louisville Ladder Co.*, 183 F.3d 339, 342 (5th Cir. 1999). Because Carr has not shown that he is entitled to injunctive relief from this court in the first instance, his motions for preliminary and permanent injunctions are also DENIED. *See Byrum v. Landreth*, 566 F.3d 442, 445 (5th Cir. 2009); *Amoco Prod. Co. v. Village of Gambell*, 480 U.S. 531, 546 n.12 (1987); *Greene v. Fair*, 314 F.2d 200, 202 (5th Cir. 1963).

Carr is REMINDED that, because he has accumulated at least three strikes under § 1915(g), he is barred from proceeding in forma pauperis in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. He is also WARNED that, regardless of the § 1915(g) bar, any frivolous, repetitive, or otherwise abusive filings that he files will invite the imposition of additional sanctions, which may include dismissal, monetary sanctions, and restrictions on his ability to file pleadings in this court and any court subject to this court's jurisdiction.

AFFIRMED; MOTIONS DENIED; REMINDED OF THREE STRIKES BAR; ADDITIONAL SANCTION WARNING ISSUED.

ENTERED

May 23, 2019

David J. Bradley, Clerk

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

RAYMOND EARL CARR,
(Former SPN #00700984)
Plaintiff,

vs.

SHERIFF ED GONZALEZ, et al.,

Defendants.

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CIVIL ACTION H-19-1754

MEMORANDUM ON DISMISSAL

Raymond Earl Carr, a former inmate of the Harris County Jail (“HCJ”), sued in April 2019, alleging civil rights violations resulting from a denial of due process. Carr seeks leave to proceed as a pauper. (Docket Entry No. 3). Carr, proceeding pro se, sues Sheriff Ed Gonzalez; the probable cause judge; the UTMB Medical Department; ISS Facility/International Airline Security; New Home Housing; Art Acevedo, Chief of the Houston Police Department (“HPD”); Wells Fargo Bank; Krash Cabin Management; Imperio Used Car Dealership; Texas Postmaster General; Houston Police Department; and the U.S. Postal Service.

The threshold issue is whether Carr’s claims should be dismissed as barred by the three-strikes provision of 28 U.S.C. § 1915(g). The Court concludes that Carr’s claims are barred and should be dismissed for the reasons stated below.

I. Carr’s Allegations

Carr asserts that the defendants are conspiring to violate his civil rights based on his race,

religion, and political views. Carr alleges that in January 2019, he called the HPD to report harassment from his supervisor who was Mexican. Carr complains that Krash Cabin Management conspired with the residents to retaliate against Carr by damaging Carr's automobile. Carr asserts that Mexican employees of Wells Fargo Bank defrauded Carr of funds in his savings account. Carr maintains that the Mexican employee of the Imperio Used Car Dealership overcharged Carr for his automobile.

Carr states that on March 18, 2019, Carr confronted a fellow resident about the damage to his automobile. Carr states that he showed the resident a knife and threatened to kill him or anyone who damaged Carr's property. The residents called 911 to report Carr's actions. Carr asserts that the white HPD officer who responded to the 911 call did not listen to Carr, and the Mexican HPD officer simply stayed in the patrol vehicle. Carr complains that he was falsely charged with aggravated assault with a deadly weapon although Carr did not inflict any harm to his fellow resident. Carr asserts that the Mexican officer at the HCJ, the probable cause judge, and his court-appointed counsel conspired to deny Carr's request for bond. Carr contends that the HCJ continues to interfere with his legal mail.

Carr seeks \$1,000,000.00 in compensatory damages and \$2,000,000.00 in punitive damages.

II. Analysis

A prisoner is not allowed to bring a civil action in forma pauperis in federal court if, while incarcerated, three or more of his civil actions or appeals were dismissed as frivolous or malicious or for failure to state a claim upon which relief may be granted, unless he is in imminent danger of serious physical injury. 28 U.S.C. § 1915(g).

Carr's litigation history reveals that he has previously submitted abusive and scurrilous

filings in federal court. Prior to filing this action, he had at least one suit and two appeals dismissed as frivolous. *Carr v. Norwood*, Appeal No. 02-2C162 (dismissed as frivolous on July 18, 2002)(5th Cir.); *Carr v. Galloway*, Appeal No. 01-41150 (dismissed as frivolous on June 18, 2002)(5th Cir.); and *Carr v. Norwood*, 4:01cv3553 (dismissed as frivolous on October 30, 2001)(S.D. Tex.).

In the present case, Carr has not alleged, nor does his complaint demonstrate, that he is in imminent danger of serious physical injury. Accordingly, Carr is barred under 28 U.S.C. § 1915(g) from proceeding in forma pauperis in this action.

III. Conclusion

Carr's motion to proceed as a pauper, (Docket Entry No. 3), is DENIED. The complaint filed by Raymond Earl Carr, (former SPN #00700984), is DISMISSED under 28 U.S.C. § 1915(g).¹ All pending motions are DENIED. Carr is warned that continued frivolous filings may result in the imposition of sanctions.

The Clerk will provide a copy of this order by regular mail, facsimile transmission, or e-mail to:

(1) the TDCJ - Office of the General Counsel, Capitol Station, P.O. Box 13084, Austin, Texas 78711, Fax: 512-936-2159;

(2) the Inmate Trust Fund, P.O. Box 629, Huntsville, Texas 77342-0629, Fax: 936-437-4793; and

¹In *Adepegba v. Hammons*, 103 F.3d 383 (5th Cir. 1998), the Fifth Circuit barred an inmate from proceeding further under the statute, except for cases involving an imminent danger of serious physical injury, and dismissed all of Adepegba's i.f.p. appeals pending in that court. The Fifth Circuit noted that the inmate could resume any claims dismissed under section 1915(g), if he decided to pursue them, under the fee provisions of 28 U.S.C. §§ 1911-14 applicable to everyone else.

(3) the Manager of the Three-Strikes List for the Southern District of Texas at:
Three_Strikes@txs.uscourts.gov.

SIGNED at Houston, Texas, on MAY 22 2019

A handwritten signature in black ink, appearing to read 'AHB', is written over a horizontal line.

ALFRED H. BENNETT
UNITED STATES DISTRICT JUDGE

ENTERED

May 23, 2019

David J. Bradley, Clerk

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

RAYMOND EARL CARR,
(Former SPN #00700984)
Plaintiff,

vs.

SHERIFF ED GONZALEZ, et al.,

Defendants.

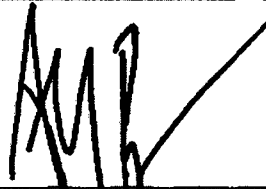
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CIVIL ACTION H-19-1754

ORDER OF DISMISSAL

For the reasons stated in this Court's Memorandum on Dismissal entered this date, this civil action is **DISMISSED** without prejudice to refiling after payment of the entire \$350.00 filing fee. The Court must receive the payment within thirty days of this order.

SIGNED at Houston, Texas, on MAY 22 2019.



ALFRED H. BENNETT
UNITED STATES DISTRICT JUDGE

ENTERED

July 26, 2019

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**RAYMOND EARL CARR,
(Former SPN #00700984)
Plaintiff,

vs.

SHERIFF ED GONZALEZ, et al.,

Defendants.§
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CIVIL ACTION H-19-1754

AMENDED ORDER

Raymond Earl Carr, an inmate of the Harris County Jail ("HCJ"), sued in April 2019, alleging civil rights violations resulting from a denial of due process. Carr requested leave to proceed as a pauper. (Docket Entry No. 3). Carr, proceeding pro se, sued Sheriff Ed Gonzalez; the probable cause judge; the UTMB Medical Department; ISS Facility/International Airline Security; New Home Housing; Art Acevedo, Chief of the Houston Police Department ("HPD"); Wells Fargo Bank; Krash Cabin Management; Imperio Used Car Dealership; Texas Postmaster General; Houston Police Department; and the U.S. Postal Service.

On May 23, 2019, this Court dismissed Carr's claims as barred by the three-strikes provision of 28 U.S.C. § 1915(g). (Docket Entry No. 9).

The Court received two Notices of Appeal. (Docket Entries Nos. 12 & 16). On July 18, 2019, this Court noted that Carr had not paid the appellate filing fee of \$505.00 and that he was barred from proceeding in forma pauperis on appeal because of the "three strikes" rule of 28 U.S.C.

§ 1915(g). (Docket Entry No. 20).

A prisoner is not allowed to bring a civil action in forma pauperis in federal court if, while incarcerated, three or more of his civil actions or appeals were dismissed as frivolous or malicious or for failure to state a claim upon which relief may be granted, unless he is in imminent danger of serious physical injury. 28 U.S.C. § 1915(g). It appears that Carr was no longer in the custody of the Harris County Jail at the time he filed his Notices of Appeal, (Docket Entries Nos. 12 & 16). Carr was not subject to the three-strikes provision of 28 U.S.C. § 1915(g) because he was not incarcerated at the time he filed his Notices of Appeal.

The Court now considers Carr's claims and whether his appeal is taken in good faith. In his complaint, Carr asserts that the defendants are conspiring to violate his civil rights based on his race, religion, and political views. Carr alleges that in January 2019, he called the HPD to report harassment from his supervisor who was Mexican. Carr complains that Krash Cabin Management conspired with the residents to retaliate against Carr by damaging Carr's automobile. Carr asserts that Mexican employees of Wells Fargo Bank defrauded Carr of funds in his savings account. Carr maintains that the Mexican employee of the Imperio Used Car Dealership overcharged Carr for his automobile.

Carr states that on March 18, 2019, Carr confronted a fellow resident about the damage to his automobile. Carr states that he showed the resident a knife and threatened to kill him or anyone who damaged Carr's property. The residents called 911 to report Carr's actions. Carr asserts that the white HPD officer who responded to the 911 call did not listen to Carr, and the Mexican HPD officer simply stayed in the patrol vehicle. Carr complains that he was falsely charged with aggravated assault with a deadly weapon although Carr did not inflict any harm to his fellow

resident. Carr asserts that the Mexican officer at the HCJ, the probable cause judge, and his court-appointed counsel conspired to deny Carr's request for bond. Carr contends that the HCJ continues to interfere with his legal mail.

To prove a conspiracy, a plaintiff must prove an actual deprivation of a constitutional right. *Salvin v. Curry*, 574 F.2d 1256, 1261 (5th Cir. 1978); *Villanueva v. McInnis*, 723 F.2d 414, 418 (5th Cir. 1984); *see also Pfannstiel v. City of Marion*, 918 F.2d 1178, 1183 (5th Cir. 1990). "The elements of civil conspiracy are (1) an actual violation of a right protected under § 1983 and (2) actions taken in concert by the defendants with the specific intent to violate the aforementioned right." *Kerr v. Lyford*, 171 F.3d 330, 340 (5th Cir. 1990). Mere conclusory allegations of conspiracy, absent reference to material facts, do not state a cause of action under 42 U.S.C. § 1983. *See Marts v. Hines*, 68 F.3d 134, 136 (5th Cir. 1995) (*en banc*). Specific facts must be pleaded when a conspiracy is alleged; mere conclusory allegations will not suffice. *Hale v. Harney*, 786 F.2d 688, 690 (5th Cir. 1986). Plaintiff must allege the operative facts of the alleged conspiracy. *Lynch v. Cannatella*, 810 F.2d 1363, 1369-70 (5th Cir. 1987). The Fifth Circuit has noted that "charges as to conspiracies must be based on substantial and affirmative allegations, and no mere gossamer web of conclusion or interference, as here, trifles light as air," will suffice to sustain a claim of conspiracy. *Crummer Co. v. Du Pont*, 223 F.2d 238, 245 (5th Cir. 1955, reh. den.).

Carr offers no facts, other than his personal belief, that there was a conspiracy, and such allegations fail to state a claim. *McAfee v. 5th Circuit Judges*, 884 F.2d 221, 222 (5th Cir. 1989) (conclusory allegations lacking reference to material facts are not sufficient to state a claim of conspiracy under § 1983).

Accordingly, it is ORDERED that:

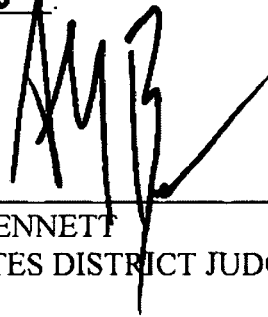
1. The Court certifies that the appeal is not taken in good faith. 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3).

2. Although this Court has certified that the appeal is not taken in good faith under 28 U.S.C. § 1915(a)(3) and Fed. R. App. P. 24(a)(3), the applicant may challenge this finding under *Baugh v. Taylor*, 117 F.3d 197 (5th Cir. 1997), by filing a separate motion to proceed in forma pauperis on appeal with the Clerk of Court for the United States Court of Appeals for the Fifth Circuit, within thirty days of the date of this order.

3. The appellant is not assessed an initial partial filing fee because he lacks the requisite funds.

4. The application for leave to proceed in forma pauperis on appeal, (Docket Entry No. 15), is DENIED.

SIGNED at Houston, Texas, on JUL 26 2019

A handwritten signature in black ink, appearing to be 'AMB' with a checkmark, is written over a horizontal line.

ALFRED H. BENNETT
UNITED STATES DISTRICT JUDGE

ENTERED

August 20, 2019

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Lord of the Streets Raymond
E Carr,

V.

Civil Rights Project, et al,

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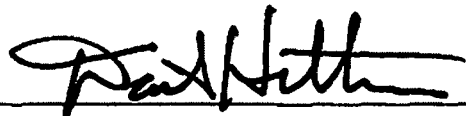
Civil Action No. 4:18-3551

ORDER

Pending before the Court is the Motion to Reopen Case or Amend the Judgment (Document # 21). Having considered the motion and the applicable law, the Court determines that the foregoing motion should be denied. Accordingly, the Court hereby

ORDERS that the Motion to Reopen Case or Amend the Judgment (Document # 21) is DENIED.

SIGNED on the 20 day of August, 2019.



DAVID HITTNER
United States District Judge

ENTERED

January 03, 2019

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Lord of the Streets Raymond §
E. Carr, §
Plaintiffs, §
v. §
Civil Rights Project, et al, §
Defendants. §

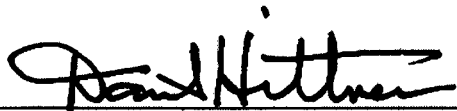
Civil Action No.: H-18-3551

ORDER

On January 2, 2019, United States Magistrate Judge Peter Bray conducted a Rule 16 Initial Scheduling Conference in the above-referenced cause. All parties failed to appear at the Scheduling Conference. The Court hereby

Dismisses the above-referenced cause for WANT OF PROSECUTION.

Signed at Houston, TX on the 3 day of January, 2019.



DAVID HITTNER
United States District Judge