

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

No. 21-6190

---

MUSTAFA OZSUSAMLAR,

Petitioner - Appellant,

v.

P. ADAMS, Warden,

Respondent - Appellee.

---

Appeal from the United States District Court for the Northern District of West Virginia, at  
Wheeling. John Preston Bailey, District Judge. (5:20-cv-00099-JPB-JPM)

---

Submitted: October 14, 2021

Decided: October 18, 2021

---

Before DIAZ and QUATTLEBAUM, Circuit Judges, and KEENAN, Senior Circuit Judge.

---

Affirmed by unpublished per curiam opinion.

---

Mustafa Ozsusamlar, Appellant Pro Se.

---

Unpublished opinions are not binding precedent in this circuit.

Appendix A.10.

PER CURIAM:

Mustafa Ozsusamlar appeals the district court's order denying relief on his 28 U.S.C. § 2241 petition. On appeal, we confine our review to the issues raised in the informal brief. *See* 4th Cir. R. 34(b). Because Ozsusamlar's informal brief does not challenge the basis for the district court's disposition, he has forfeited appellate review of the court's order. *See Jackson v. Lightsey*, 775 F.3d 170, 177 (4th Cir. 2014) ("The informal brief is an important document; under Fourth Circuit rules, our review is limited to issues preserved in that brief."). Accordingly, we deny Ozsusamlar's motion to appoint counsel and affirm the district court's judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*AFFIRMED*

FILED: December 21, 2021

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

No. 21-6190  
(5:20-cv-00099-JPB-JPM)

MUSTAFA OZSUSAMLAR

Petitioner - Appellant

v.

P. ADAMS, Warden

Respondent - Appellee

ORDER

The court denies the petition for rehearing and the motion for oral argument.

Entered at the direction of the panel: Judge Diaz, Judge Quattlebaum, and  
Senior Judge Keenan.

For the Court

/s/ Patricia S. Connor, Clerk

Appendix A.8.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
Wheeling**

**MUSTAFA OZSUSAMLAR,**

Plaintiff,

v.

**Civil Action No. 5:21-CV-91**  
Judge Bailey

**PAUL ADAMS, Warden, et al.,**

Defendants.

**ORDER DISMISSING CASE FOLLOWING NOTICE OF INTENT TO DISMISS**

On May 27, 2021, the plaintiff filed a complaint in the Circuit Court of Preston County, West Virginia alleging violations of his First Amendment rights at FCI Hazelton. On June 15, 2021, the matter was removed to this Court. However, because the complaint was not on the Court-approved form, the Clerk of Court issued the plaintiff a Notice of Deficient Pleading and Intent to Dismiss. The Notice informed the plaintiff that this case would be dismissed within 30 days, and if he wished to pursue his complaint, he would have to refile it on the Court-approved form.

On July 14, 2021, the plaintiff refiled his complaint on the Court-approved form, and it has been assigned Civil Action No. 5:21-CV-114. Accordingly, pursuant to the terms of the Notice, the Court **ORDERS** that this action is hereby **DISMISSED** and all matters relating to the complaint shall proceed in Civil Action No. 5:21-CV-114.

The Clerk is **DIRECTED** to mail a copy of this Order to the plaintiff by certified mail, return receipt requested, to his last known address as reflected on the docket sheet.

**DATED:** July 15, 2021.

  
**JOHN PRESTON BAILEY**  
**UNITED STATES DISTRICT JUDGE**

Appendix-B.20.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
Wheeling**

**MUSTAFA OZSUSAMLAR,**

Plaintiff,

v.

**Civil Action No. 5:21-CV-114**  
Judge Bailey

**PAUL ADAMS, Warden, et al.,**

Defendants.

**MEMORANDUM OPINION AND ORDER**

The plaintiff, Mustafa Ozsusamlar, a federal prisoner, filed this action on July 14, 2021, under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971) alleging violations of his First Amendment rights at FCI Hazelton. In addition, he filed an Application and Affidavit to Proceed Without Prepayment of Fees (*in forma pauperis*).

The Prison Litigation Reform Act (PLRA) of 1995 ("PLRA") provides that a sanction shall be imposed on those prisoners who file meritless lawsuits repeatedly. The sanction is that such prisoners lose the right to proceed without prepayment of fees and costs.

In no event shall a prisoner bring a civil rights action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more 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.

Appendix B.21.

28 U.S.C. § 1915(g); see also, **Ashley v. E. Dilworth**, CO-1, 147 F.3d 715 (8th Cir. 1998) ("Section 1915(g) denied the installment payment method to those prisoners who have had three previous cases or appeals dismissed as frivolous, malicious, or for failure to state a claim upon which relief can be granted ('three strikes')."). Consequently, "the proper procedure is for the district court to dismiss the complaint without prejudice when it denies a prisoner leave to proceed *in forma pauperis* pursuant to the 3 strikes provision of 1915(g). The prisoner cannot simply pay the filing fee after being denied *in forma pauperis* status. He must pay the filing fee at the time he initiates the suit." **Dupree v. Palmer**, 284 Fed 3d 1234, 1237 (11th Cir. 2002); see also **Finley v. Doe**, 2008 WL 264-5472 (S.D. W.Va. June 30, 2008) (Johnston, J.).

The undersigned's review of PACER, the nationwide database maintained by the federal courts, indicates that at least three of the plaintiff's prior civil cases qualify as strikes under this provision. See **Ozsusamlar v. Tulman**, Civil Action No. 08-CV-5824 (KMW) (S.D. N.Y. June 27, 2008) (dismissed for failure to state a claim and warning of consequences of accumulating three strikes); **Ozsusamlar v. Southwell**, Civil Action No. 07-CV-5736 (KMW) (S.D.N.Y. June 18, 2007) (dismissed for failure to state a claim and for suing immune defendant), *app. dismissed*, (No. 07-5401-pr (2d Cir. April 17, 2009) (dismissed as frivolous); **Ozsusamlar v. Campanella**, No. 06-CV-5424 (MBM) (S.D.N.Y. July 18, 2006) (dismissed for failure to state a claim); see also **Ozsusamlar v. Ponds**, 1:04-cv-02047-MBM (S.D.N.Y. Mar. 16, 2004) (explaining that complaint was being dismissed for lack of subject-matter jurisdiction, improper venue, and failure to state claim). The Court also notes that in 2013, the plaintiff filed a civil rights lawsuit in the Southern District of New York. See **Ozsusamlar v. Seidler**, 1:13-cv-08415-LAP (S.D.N.Y. Mar. 12, 2014). The district court ordered him to show cause why his IFP application should not be denied under 28 U.S.C. § 1915(g). The Court explained that

Appendix B.22.

because the plaintiff already had accumulated at least three strikes, he could no proceed unless he paid the full filing fee. The plaintiff responded that he could pay the fee in installments, but he did not dispute that he had accumulated three strikes. Finally, the Court notes in 2016, the United States Court of Appeals for the Seventh Circuit found that the plaintiff had committed a fraud against both it and the district court by not disclosing his ineligibility to proceed IFP. Accordingly, the Court of Appeals immediately dismissed the appeal and gave the plaintiff 14 days to pay the appellate fees of \$504. In addition, the Court of Appeals indicated that it would enter an order directing the clerks of all courts in that circuit to return unfiled all papers the plaintiff submitted (other than collateral attacks on his imprisonment) until all outstanding fee are paid. See **Ozsusamlar v. Szoke**, 669 Fed. Appx. 795 (7th Cir. 2016).

While the PLRA includes an exception to the section 1915 (g) filing restriction if the prisoner is under imminent danger of serious physical injury, that exception cannot apply in this case. The plaintiff does not allege that he is in imminent danger of serious physical injury. Instead, the plaintiff alleges that various employees of the Bureau of Prisons at FCI Hazelton have destroyed his incoming and outgoing legal mail and opened, read and copied the same outside his presence, cursed and yelled at him, moved him from the ground floor to the fourth floor for punishment, not responded to his remedy requests, and not given him a job. For relief, he asks the Court to sentence the defendants to imprisonment and fines and give him his legal rights as well as unspecific declaratory relief and compensation.


Accordingly, the plaintiff's complaint is **DISMISSED WITHOUT PREJUDICE** and his Motion to proceed *in forma pauperis* [Doc. 2] is **DENIED**, and his Motion/Constitutional Bill of Right to an Attorney and a Turkish Interpreter [Doc. 5] is **DENIED AS MOOT**.

The Clerk is **DIRECTED** to mail a copy of this Order to the plaintiff by certified mail,

Appendix B.23.

return receipt requested, to his last known address as reflected on the docket sheet.

**DATED:** July 15, 2021.



JOHN PRESTON BAILEY  
UNITED STATES DISTRICT JUDGE

Appendix-B.24.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC-SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC#:  
DATE FILED: 11/16/2021

UNITED STATES OF AMERICA

v.

MUSTAFA OZSUSAMLAR,

Defendant.

No. 05-CR-1077 (RA)

ORDER

RONNIE ABRAMS, United States District Judge:

On October 20, 2021, the Court denied Mr. Ozsusamlar's *pro se* motion for reconsideration of the Court's previous denial of his motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A). Dkts. 148, 157. On November 5, 2021, the Court received a letter from Mr. Ozsusamlar, which was dated and signed October 28, 2021, in which he wrote, "I believe I have [the] right to appeal" and requested the Court to "docket[ his] timely appeal request." Dkt. 158. He states that his ground for appeal is ineffective assistance of counsel because he was not represented in his reconsideration motion.

The Court hereby construes Mr. Ozsusamlar's letter as a notice of appeal of the Court's October 20, 2021 Order. *See Marvin v. Goord*, 255 F.3d 40, 42 n.1 (2d Cir. 2001) (per curiam) (explaining that *pro se* notices of appeal are construed liberally). Although the notice was not filed on the Court's docket until November 5, 2021—more than two weeks after the date of the Order—it is timely because Mr. Ozsusamlar's notice of appeal is dated October 28, 2021, which is within the fourteen-day appeal period. Fed. R. App. P. 4(c)(1) (providing that an incarcerated individual's notice of appeal is timely filed if it is deposited in the institution's internal mail system on or before the last day for filing); *Hardy v. Conway*, 162 F. App'x 61, 62 (2d Cir. 2006) ("[I]n the absence of contrary

evidence, district courts in this circuit have tended to assume that prisoners' papers were given to prison officials [for mailing] on the date of their signing.”).

If Mr. Ozsusamlar cannot afford to pay the \$500 docket fee and \$5.00 processing fee, he may move to proceed *in forma pauperis*. The Court has attached to this Order a form “Motion for Leave to Proceed *In Forma Pauperis* on Appeal,” which Mr. Ozsusamlar may complete and submit to the Court if he wishes to proceed *in forma pauperis*, and an information packet about appealing to the Second Circuit.

The Clerk of Court is respectfully directed to mail a copy of this Order and attached forms to Mr. Ozsusamlar at the following address:

Mustafa Ozsusamlar, BOP Number 18188-050  
FCI Hazelton  
P.O. Box 5000  
Bruceton Mills, WV 26525

SO ORDERED.

Dated: November 16, 2021  
New York, New York



Ronnie Abrams  
United States District Judge