

Appendex "B"

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

January 3, 2022

No. 21-20601

Lyle W. Cayce
Clerk

MICHAEL G. PETERS,

Plaintiff—Appellant,

versus

CITY OF HOUSTON; STATE OF TEXAS; HARRIS COUNTY,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:21-CV-2969

CLERK'S OFFICE:

Under 5TH CIR. R. 42.3, the appeal is dismissed as of January 3, 2022, for want of prosecution. The appellant failed to timely pay the filing fee.

ENTERED

October 27, 2021

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MICHAEL G. PETERS,
(TDCJ #2019190)

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Plaintiff,

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§
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vs.

CIVIL ACTION NO. 4:21-cv-2969

CITY OF HOUSTON, *et al.*,

§
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§
§

Defendants.

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ORDER OF DISMISSAL

Plaintiff Michael G. Peters is presently incarcerated in the Texas Department of Criminal Justice – Correctional Institutions Division (TDCJ) at the Stringfellow Unit in Rosharon. Peters has filed a civil-rights complaint under 42 U.S.C. § 1983 (Dkt. No. 1) against the City of Houston, the State of Texas, and Harris County, alleging that the defendants stole his property, land, and home. Peters has also filed a motion requesting leave to proceed *in forma pauperis* (Dkt. No. 2). That motion will be denied and this case will be dismissed for the reasons explained below.

This civil action is governed by the Prison Litigation Reform Act (PLRA), which was enacted, in part, to prevent prisoners from abusing the privilege of proceeding *in forma pauperis*. *See Adepegba v. Hammons*, 103 F.3d 383, 387 (5th Cir. 1996), *abrogated on other grounds by Coleman v. Tolleson*, 575 U.S. 532, 537 (2015). Under the “three-strikes” rule established by the PLRA, a prisoner is not allowed to bring a civil action without prepaying the filing fee if, while incarcerated, three or more of his civil actions or appeals have been dismissed as frivolous, 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); *Lomax v. Ortiz-Marquez*, — U.S. —, 140 S. Ct. 1721, 1723 (2020) (observing that the three-strikes rule was established to “help staunch a ‘flood of nonmeritorious’ prisoner cases”) (quoting *Jones v. Bock*, 549 U.S. 199, 203 (2007)).

Court records confirm that Peters, who has filed more than 70 civil actions and appeals in the federal courts while incarcerated, has incurred well over three strikes for filing frivolous and malicious cases: (1) *Peters v. Gilbert*, No. 4:15-cv-2762 (S.D. Tex. Oct. 1, 2015) (dismissed as frivolous); (2) *Peters v. Tex. Medical Board*, No. 4:15-cv-2858 (S.D. Tex. Oct. 8, 2015) (dismissed as frivolous and for failure to state a claim); (3) *Peters v. Tex. Children’s Hospital, et al.*, No. 4:15-cv-2900 (S.D. Tex. Oct. 6, 2015) (dismissed as malicious and for failure to state a claim); (4) *Peters v. Dr. Dreyer*, No. 4:15-cv-2899 (S.D. Tex. Oct. 14, 2015) (dismissed for failure to state a claim); (5) *Peters v. Harrison, et al.*, No. 4:15-cv-3037 (S.D. Tex. Oct. 19, 2015) (dismissed as frivolous and for failure to state a claim); (6) *Peters v. Valigura*, No. 4:15-cv-3023 (S.D. Tex. Oct. 27, 2015) (dismissed as frivolous and for failure to state a claim); (7) *Peters v. Duckworth*, No. 4:15-cv-3024 (S.D. Tex. Oct. 22, 2015) (dismissed as frivolous and for failure to state a claim); (8) *Peters v. State of Texas*, No. 4:17-cv-1459 (S.D. Tex. May 17, 2017) (dismissed for failure to state a claim); and (9) *Peters v. State of Texas*, No. 4:18-cv-261 (S.D. Tex. Jan. 31, 2018) (dismissed as frivolous and for failure to state a claim).

Many other cases filed by Peters have been dismissed as barred by the three-strikes rule. Peters has also incurred monetary sanctions for his abuse of judicial resources. *See Peters v. State of Texas*, No. 4:18-cv-261 (S.D. Tex. Jan. 31, 2018) (Dkt. No. 5, at 4)

(imposing sanctions in the amount of \$400.00); *Peters v. State of Texas*, Civil No. 3:21-cv-166 (S.D. Tex. July 9, 2021) (Dkt. No. 5, at 5) (imposing another strike and sanctions in the amount of \$402.00, warning further that Peters may be subject to additional sanctions if he continues to abuse judicial resources by filing repetitive, frivolous complaints).

Because Peters has more than three strikes for purposes of § 1915(g), he is barred from proceeding *in forma pauperis* in any civil action or appeal unless he demonstrates that an imminent danger of serious physical injury exists at the time his complaint is filed. *See Banos v. O'Guin*, 144 F.3d 883, 885 (5th Cir. 1998) (per curiam). The current complaint does not fit within the exception to the three-strikes rule.

Accordingly, the Court **ORDERS** as follows:

1. The motion for leave to proceed *in forma pauperis* filed by Michael G. Peters (Dkt. No. 2) is **DENIED**.
2. This lawsuit is **DISMISSED** without prejudice as barred by the three-strikes rule found in 28 U.S.C. § 1915(g).
3. Peters may re-file this lawsuit only if he pre-pays the full amount of the filing fee for a civil action (\$402.00).

The Clerk will provide a copy of this order to the Manager of the Three-Strikes List for the Southern District of Texas at Three_Strikes@txs.uscourts.gov.

SIGNED at Houston, Texas, on 10/27/21.



ALFRED H. BENNETT
UNITED STATES DISTRICT JUDGE