IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 21-13551-F

TIMOTHY LITTLEJOHN,

Petitioner-Appellant,

versus

DR. DALTON,
et al.,
WELLPATH,
NURSE SANDRA TILTON,
COBB COUNTY,
JOHN DOE EYE SPECIALIST, et al.,

Respondents-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

Before: JORDAN, GRANT, and BRASHER, Circuit Judges.

BY THE COURT:

Timothy Littlejohn, a Georgia pretrial detainee proceeding *pro se*, appeals the district court's dismissal without prejudice of his *pro se* 42 U.S.C. § 1983 complaint under the Prison Litigation Reform Act's ("PLRA") three-strikes provision, 28 U.S.C. § 1915(g), and for abuse of judicial process. He filed in the district court a notice of appeal and a motion to proceed on appeal *in forma pauperis*, which the court denied. He now moves in this Court for leave to proceed and for appointment of counsel.

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Section 1915(g) precludes a prisoner from bringing a civil action or appealing a civil judgment *in forma pauperis* if he has filed three or more civil suits that have been dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted, "unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g). Additionally, the PLRA prevents a prisoner from proceeding on appeal if doing so would be frivolous. *See* 28 U.S.C. § 1915(e)(2)(B). An action is frivolous if it is without arguable merit in law or fact. *Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002) (quotation omitted), *overruled on other grounds by Hoever v. Marks*, 993 F.3d 1353 (11th Cir. 2021) (*en banc*).

It is unnecessary to consider the district court's determination that Littlejohn was a three-striker and had not made a sufficient showing imminent danger of serious physical injury, as the court's alternative determination that the complaint was an abuse of the judicial process was correct. Thus, this Court now finds that the appeal is frivolous, DENIES leave to proceed, and DISMISSES the appeal. Littlejohn's motion for appointment of counsel is DENIED AS MOOT.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Timothy Littlejohn,

Plaintiff,

v. Case No. 1:21-cv-3170-MLB

Dr. Dalton, et al.,

Defendants.

_____/

ORDER

Before the Court is the Magistrate Judge's Report and Recommendation ("R&R") (Dkt 3), recommending that this matter be dismissed. Plaintiff Timothy Littlejohn filed objections (Dkt. 5).

A district judge has broad discretion to accept, reject, or modify a magistrate judge's proposed findings and recommendations. *United States v. Raddatž*, 447 U.S. 667, 680 (1980). Under 28 U.S.C. § 636(b)(1), the Court reviews any portion of the Report and Recommendation that is the subject of a proper objection on a de novo basis and any non-objected portion under a "clearly erroneous" standard. "Parties filing objections to a magistrate's report and recommendation must specifically identify

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those findings objected to. Frivolous, conclusive or general objections need not be considered by the district court." *Marsden v. Moore*, 847 F.2d 1536, 1548 (11th Cir. 1988).

Littlejohn, an inmate at the Cobb County Adult Detention Center (CCADC) in Marietta, Georgia, filed the instant 42 U.S.C. § 1983 civil rights action claiming jail officials were not properly treating his purported glaucoma. The Magistrate Judge noted that Littlejohn has, on more than three occasions while a prisoner, filed complaints in federal court that were dismissed as frivolous or for failure to state a claim for relief. (Dkt. 3 at 1-3 (listing cases)). Pursuant to 28 U.S.C. § 1915(g) a prisoner is prohibited from bringing a civil action in federal court in forma pauperis "if the prisoner has, on 3 or more prior 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." The Magistrate Judge concluded that Littlejohn had failed to raise an allegation of that he is in imminent danger of serious physical injury because his allegations constitute merely a disagreement

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with the course of his medical treatment rather than a valid claim of deliberate indifference.

According to the Eleventh Circuit, "the proper procedure is for the district court to dismiss the complaint without prejudice when it denies the prisoner leave to proceed in forma pauperis pursuant to the three strikes provision of §1915(g). The prisoner . . . must pay the filing fee at the time he initiates the suit." *Dupree v. Palmer*, 284 F.3d 1234, 1236 (11th Cir. 2002). The Magistrate Judge thus recommends that the instant action be dismissed.

In the alternative, the Magistrate Judge also points out that this Court's prisoner civil rights complaint form, which Littlejohn used in preparing his complaint, requires the plaintiff prisoner to provide a list of all of his previous federal lawsuits. Littlejohn, however, listed only thirty-six of the approximately fifty lawsuits that he has filed. As noted by the Magistrate Judge, it is well within this Court's discretion to dismiss a prisoner's complaint for abuse of process when the prisoner files a complaint that fails to fully disclose all of his prior cases on the civil complaint form. *See Jackson v. Fla. Dep't of Corr.*, 491 F. App'x 129 (11th Cir. 2012) (finding the district court did not abuse its discretion by

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dismissing a prisoner's complaint for abuse of the judicial process based on his failure to disclose at least one federal action dismissed prior to service); *see also* (Dkt. 3 at 6 (citing several other cases)). Given Littlejohn's well-documented history of filing numerous vexatious and frivolous pleadings and motions in this Court, the Magistrate Judge recommends dismissal for his abuse of process.

Littlejohn's objections are not particularly clear, but he apparently contends that the Magistrate Judge erred in concluding that he had not sufficiently alleged that he is in imminent danger of serious physical injury. However, this Court has reviewed the complaint in this matter, and agrees with the Magistrate Judge's determination that Littlejohn allegations amount to no more than a dispute about the appropriate treatment. In the complaint, Littlejohn alleges that, after he filed medical requests regarding problems with his vision, he was seen by a nurse practitioner who performed an eye test. After the test, the nurse practitioner said, "this is bad, real bad" and that Littlejohn needed to see an eye doctor. He was then taken to what he describes as a "specialist." The specialist examined Littlejohn, informed him that he had glaucoma,

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and prescribed bifocal glasses. He received the glasses, but his vision continued to deteriorate.

Sometime later, he was seen by a CCADC physician along with the specialist, and the specialist changed her diagnosis and told Littlejohn he did not have glaucoma. Littlejohn insists she is lying (at the direction of CCADC medical officials) to save CCADC money.

This Court agrees with the Magistrate Judge's determination that Littlejohn's contention that the specialist is lying is purely speculative. *See Bell A. Corp. v. Twombly,* 550 U.S. 544, 555 (2007) (holding that speculative allegations fail to state a claim for relief). Moreover, medical staff have examined Littlejohn in response to his complaints regarding his vision and have prescribed treatment. He acknowledges that he has received medical attention—just not the level of attention that he claims to be warranted by what he believes his condition to be. *See Hernandez v. Sec'y, Fla. Dep't of Corr.*, 611 F. App'x 582, 584 (11th Cir. 2015) ("[N]either a difference in medical opinion between the inmate and the care provider, nor the exercise of medical judgment by the care provider, constitutes deliberate indifference."); *Adams v. Poag*, 61 F.3d 1537, 1545 (11th Cir. 1995) (holding that an inmate's mere disagreement with the

treatment a physician provides him is not sufficient to establish deliberate indifference). Because Littlejohn has failed to state a claim of deliberate indifference, this Court agrees that he cannot establish that he is under imminent danger of serious physical injury.

In addition, Littlejohn has entirely failed to object to the Magistrate Judge's determination that this matter should be dismissed for his abuse of judicial process for failing to fully disclose his litigation history. Having reviewed the record, this Court concludes that the Magistrate Judge did not clearly err in that determination.

Accordingly, it is hereby **ORDERED** that Littlejohn's objections to the R&R (Dkt. 5) are **OVERRULED** and the R&R (Dkt. 3) is **ADOPTED** as the Order of the Court. The instant action is **DISMISSED** without prejudice pursuant to 28 U.S.C. § 1915(g) and *Dupree v. Palmer*, 284 F.3d 1234, 1236 (11th Cir. 2002). This action is also **DISMISSED** without prejudice for Littlejohn's abuse of judicial process. The Clerk is **DIRECTED** to close this case.

SO ORDERED this 22nd day of September, 2021.

MICHAEL L. BROWN
UNITED STATES DISTRICT JUDGE

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

TIMOTHY LITTLEJOHN, Inmate No. 1074022, Plaintiff,	: : :	PRISONER CIVIL RIGHTS 42 U.S.C. §1983
v.	:	CIVIL ACTION NO. 1:21-CV-3170-MLB-JKL
DR. DALTON; et al., Defendant.	: :	

FINAL REPORT AND RECOMMENDATION

Plaintiff, a serial filer and pretrial detainee at the Cobb County Adult Detention Center, submitted a *pro se* civil rights action and seeks to proceed without paying the $402.00 filing and administrative fees. (Docs. 1, 2).

I. THREE STRIKES

According to Subsection (g) of 28 U.S.C. §1915, a prisoner is prohibited from bringing a civil action in federal court *in forma pauperis* ("IFP") "if the prisoner has, on 3 or more prior 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."

Court records reflect that since March of 2020, Plaintiff has filed fifty cases in this Court while he was a prisoner, the majority of which were dismissed as

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frivolous.[1] *See Littlejohn v. Boyce*, Civil Action No. 1:20-CV-1977-MLB (N.D. Ga. July 28, 2020) (dismissed as frivolous under §1915A) *Littlejohn v. Brooks*, Civil Action No. 1:20-CV-1748-MLB (N.D. Ga. July 28, 2020) (dismissed as frivolous under §1915A); *Littlejohn v. Phillips*, Civil Action No. 1:20-CV-1975-MLB (N.D. Ga. July 28, 2020); *Littlejohn v. Cox*, Civil Action No. 1:20-CV-1546-MLG (N. D. Ga. July 28, 2020) (dismissed as frivolous under §1915A); *Littlejohn v. Hill*, Civil Action No. 1:20-CV-1750-MLB (N.D. Ga. July 28, 2020) (dismissed as frivolous under §1915A); *Littlejohn v. Holmes*, Civil Action No. 1:20-CV-1406-MLB (N.D. Ga. July 28, 2020) (dismissed as frivolous under §1915A); *Littlejohn v. Atkins*, Civil Action No. 1:20-CV-1749-MLB (N.D. Ga. July 2, 2020) (dismissed as frivolous under §1915A); *Littlejohn v. Marshall*, Civil Action No. 1:20-CV-1543-MLB (N.D. Ga. July 28, 2020) (dismissed as frivolous under §1915A); *Littlejohn v. Maldonado*, Civil Action No. 1:20-CV-1976-MLB (N.D. Ga. July 28, 2020) (dismissed as frivolous under §1915A); *Littlejohn v. Carter*, Civil Action No. 1:20-CV-1544-MLB (N.D. Ga. July 2, 2020) (dismissed under §1915A as frivolous); *Littlejohn v.*

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[1] The number of Plaintiff's cases includes this case and four others that he filed at the same time. *See Littlejohn v. Wellpath*, Civil Action No. 1:21-CV-3171-MLB-JKL; *Littlejohn v. Baines*, Civil Action No. 1:21-CV-3172-MLB-JKL; *Littlejohn v. United States Magistrate Court for the Northern District of Georgia*, Civil Action No. 1:21-CV-3173-MLB-JKL; *Littlejohn v. United States District Court for the Northern District of Georgia*, Civil Action No. 1:21-CV-3174-MLB-JKL. Plaintiff also recently filed a petition for habeas corpus. *See Littlejohn v. Owens*, Civil Action No. 1:21-CV-3169-MLB-JKL.

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Warren, Civil Action No. 1:20-CV-1538-MLB (N.D. Ga. July 2, 2020) (dismissed under §1915A as frivolous).

II. NO IMMINENT DANGER

In this case, Plaintiff alleges that from 2020 and since January 20, 2021, he has complained about seeing black spots and blurred vision, he was seen by medical and was told he had glaucoma, and he then saw a specialist who prescribed bifocal glasses for him. Despite the glasses, however, Plaintiff's vision is getting worse and he is afraid he will go blind. Plaintiff further alleges that he was later called back to medical to see Dr. Dalton and Nurse Sandra. According to Plaintiff, Dalton and Sandra lied to him and told him that he actually did not have glaucoma, so that they could save money and not send him to a glaucoma specialist. I find that Plaintiff's allegations do not show that he is in "imminent danger of serious physical harm.'"

Indeed, Plaintiff states that since 2020 or at the latest January of this year, he has been examined by medical staff and an eye specialist, he has received glasses for the alleged glaucoma, and that since that time his diagnosis has changed. And Plaintiff's allegation that Defendants lied to him so they could save money by not sending him to a glaucoma specialist is pure speculation. I find that at most, his allegations would constitute a disagreement with the course of treatment or medical judgment, neither of which are actionable under §1983. *See, e.g., See McLeod v. Sec'y, Fla. Dep't of Corr.*, 679 F. App'x 840, 843 (11th Cir. 2017) ("Where an

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inmate receives medical treatment but desires different modes of treatment, the care provided does not amount to deliberate indifference."); *Wallace v. Hammontree*, 615 F. App'x 666, 667 (11th Cir. 2015) ("Claims concerning the doctor's medical judgment, such as whether the doctor should have used another form of medical treatment or a different diagnostic test, are inappropriate claims under the Eighth Amendment.");[2] *Hernandez v. Sec'y, Fla. Dep't of Corr.*, 611 F. App'x 582, 584 (11th Cir. 2015) ("[N]either a difference in medical opinion between the inmate and the care provider, nor the exercise of medical judgment by the care provider, constitutes deliberate indifference."); *Adams v. Poag*, 61 F.3d 1537, 1545 (11th Cir. 1995) (stating that an inmate's mere disagreement with the treatment a physician provides him is not sufficient to establish deliberate indifference). Plaintiff has not demonstrated deliberate indifference, and he has failed to sufficiently allege that he is under imminent danger of serious physical injury. *Cf. Duncan v. Carmichael*, 475 F. App'x 535, 536 (5th Cir. 2012) (finding claim of inadequate treatment for glaucoma did not constitute imminent danger); *Gorbey v. Geisinger Eye Ctr. Owners and Rueters*, No. 3:20-cv-2433, 2021 WL 1792086, at *2-3 (M.D. Pa. May 5, 2021)

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[2] Because Plaintiff is a pre-trial detainee, conditions of confinement are analyzed under the Fourteenth Amendment Due Process Clause instead of the Eighth Amendment's Cruel and Unusual Punishments Clause. *See Purcell ex rel. Estate of Morgan v. Toombs Cnty., Ga.*, 400 F.3d 1313, 1318 (11th Cir. 2005). However, "[t]he standard for providing basic needs to those incarcerated or in detention are the same under both the Eighth and Fourteenth Amendments." *Id.* (quotation marks and citations omitted).

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(finding plaintiff's allegation that, *inter alia*, he was not being treated for glaucoma did not constitute imminent danger under §1915(g)); *Hale v. Gago*, No. 1:17-cv-550, 2017 WL 2962781, at *2 (W.D. Mich. July 12, 2017) (finding no imminent danger where plaintiff was seen and treated for his eye ailments); *Miles v. Med. Servs., Inc.*, No. AW-10-3011, 2010 WL 4291998, at *1 n.1 (D. Md. Oct. 29, 2010) (stating that inmate's allegation that he was not receiving eye drops for his glaucoma did not constitute imminent danger).

According to the Eleventh Circuit, "the proper procedure is for the district court to dismiss the complaint without prejudice when it denies the prisoner leave to proceed in forma pauperis pursuant to the three strikes provision of §1915(g). The prisoner . . . must pay the filing fee at the time he initiates the suit." *Dupree v. Palmer*, 284 F.3d 1234, 1236 (11th Cir. 2002). *See also Simmons v. Zloch*, 148 F. App'x 921, 922 (11th Cir. 2005) (citing to *Dupree* in affirming denial of IFP motion and dismissing complaint pursuant to §1915(g) because there was no evidence that the plaintiff paid the filing fee at the time he initiated suit or that he was in imminent danger of serious physical injury).

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III. ABUSE OF PROCESS

Even if Plaintiff had sufficiently alleged imminent danger, however, this action still should be dismissed. A district court may impose sanctions if a party knowingly files a pleading that contains false statements. Fed. R. Civ. P. 11(c), and it is well within a court's discretion to dismiss a prisoner's complaint for abuse of process when the prisoner files a complaint that fails to fully disclose all of his prior cases on the civil complaint form. *See Rivera v. Allin*, 144 F.3d 719, 731 (11th Cir. 1998) (finding that a *pro se* prisoner's failure to disclose the existence of a prior lawsuit is the kind of abuse of process that warrants dismissal), *abrogated on other grounds by Jones v. Bock*, 549 U.S. 199 (2007); *Jackson v. Fla. Dep't of Corr.*, 491 F. App'x 129 (11th Cir. 2012) (finding the district court did not abuse its discretion by dismissing a prisoner's complaint for abuse of the judicial process based on his failure to disclose at least one federal action dismissed prior to service); *Redmond v. Lake Cnty. Sheriff's Off.*, 414 F. App'x 221 (11th Cir. 2011) (affirming dismissal for abuse of judicial process when prisoner failed to disclose several previous lawsuits filed in district court); *Attwood v. Singletary*, 105 F.3d 610, 613 (11th Cir. 1997) (per curiam) (holding failure to disclose previous litigation history constitutes and abuse of discretion warranting dismissal).

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In the complaint, Plaintiff only disclosed thirty-six of the fifty lawsuits he has filed since last March.[3] Given Plaintiff's extensive history of filing numerous vexatious and frivolous pleadings and motions in this Court, the sanction of dismissal without prejudice is proper in this instance.

III. CONCLUSION

Based on the foregoing, **IT IS RECOMMENDED** that leave for Plaintiff to proceed IFP [Doc. 2] be **DENIED** pursuant to §1915(g) and that the instant action be **DISMISSED WITHOUT PREJUDICE**.

Alternatively, **IT IS RECOMMENDED** that the complaint be **DISMISSED WITHOUT PREJUDICE** for Plaintiff's abuse of process.

The Clerk is **DIRECTED** to terminate the referral to the undersigned magistrate judge.

SO RECOMMENDED this 6th day of August, 2021.

JOHN K. LARKINS III
UNITED STATES MAGISTRATE JUDGE

[3] Apparently, Plaintiff stopped counting the cases he filed after August of 2020. (Doc. 1 at 3-4).

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Additional material from this filing is available in the Clerk's Office.