

United States Court of Appeals
for the Fifth Circuit

No. 22-20276

United States Court of Appeals
Fifth Circuit

FILED

July 20, 2022

Lyle W. Cayce
Clerk

JAIME LUEVANO,

Petitioner—Appellant,

versus

BOBBY LUMPKIN, *Director, Texas Department of Criminal Justice,
Correctional Institutions Division,*

Respondent—Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:21-CV-1731

CLERK'S OFFICE:

Under 5TH CIR. R. 42.3, the appeal is dismissed as of July 20, 2022,
for want of prosecution. The appellant failed to timely pay the filing fee.

LYLE W. CAYCE
Clerk of the United States Court
of Appeals for the Fifth Circuit

Rebecca L. Leto

By: _____
Rebecca L. Leto, Deputy Clerk

ENTERED AT THE DIRECTION OF THE COURT

ENTERED

May 02, 2022

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JAIME LUEVANO , (TDCJ-CID #1655791)	§ CIVIL ACTION NO.
Petitioner,	§ 4:21-cv-01731
	§
	§
	§
vs.	§ JUDGE CHARLES ESKRIDGE
	§
	§
BOBBY LUMPKIN,	§
Respondent.	§

MEMORANDUM ON DISMISSAL

Jaime Luevano has filed a pleading entitled "Emergency Writ of 2254 to Challenge Crime." Dkt 1 at 1. He sues "El Paso convictions two (2) county-et al." Dkt 1 at 1. The pleading was docketed as a petition for a writ of *habeas corpus* under 28 USC § 2254. On reconsideration, the Court construes it as a complaint under 42 USC § 1983 and dismisses it as barred by outstanding sanctions.

Luevano is an inmate of the Hughes Unit of the Texas Department of Criminal Justice—Correctional Institutions Division. He complains that crimes are taking place at the Hughes Unit; Walker County refuses to file criminal charges and is denying him access to the courts; the Court of Appeals is denying him access to the courts; Walker County officials are covering up crimes; inmates with mental illness store human waste in their cells for use as a weapon; prison officials refused to transfer him to a different unit; and he was assaulted in March 2021. Dkt 1 at 1–9. His pleadings are interspersed with correspondence from the Court of Appeals First District of Houston, District Clerks of Walker County, TDCJ Office of the

Inspector General, Regional Directors in Huntsville, Texas, and State Commission on Classification.

Luevano proceeds here *pro se*. He hasn't paid the filing fee or sought leave to proceed *in forma pauperis*. But the Court presumes that he seeks leave to proceed *in forma pauperis* based on his extensive litigation history. A prisoner isn't allowed to do so if federal courts have dismissed three or more prior civil actions or appeals for frivolousness, maliciousness, or failure to state a claim upon which relief may be granted. But this bar doesn't apply if the prisoner is in imminent danger of serious physical injury. 28 USC § 1915(g).

Luevano filed a petition for a writ of mandamus in Civil Action Number 6:21-cv-00023 in the Victoria Division of the Southern District of Texas. Judge Drew Tipton summarized Luevano's litigation history and dismissed his complaint in June 2021, stating:

Court records reflect that Luevano has a lengthy history of filing frivolous actions in the federal district courts that were dismissed as frivolous, malicious, or for failure to state a claim for relief. *See Luevano v. Region Directors*, No. 4:12-cv-1022 (S.D. Tex. Apr. 10, 2012); *Luevano v. U.S. Dist. Cts. Of Texas*, No. 6:11-cv-203 (E.D. Tex. May 23, 2011); *Luevano v. Connally Unit*, No. 5:10-cv-831 (W.D. Tex. Oct. 26, 2010); *Luevano v. Texas Supreme Ct.*, No. 5:09-cv-434 (W.D. Tex. June 5, 2009); *Luevano v. Casey*, No. 3:09-cv-583 (M.D. Pa. May 27, 2009); *Luevano v. U.S. Supreme Ct. Clerks*, No. 1:09-cv-71 (D.D.C. Jan. 13, 2009); *Luevano v. Boykin*, No. 5:08cv-1844 (N.D. Ohio Oct. 31, 2008); *Luevano v. Richardson*, No. 1:08-cv-781 (D.N.M. Oct. 1, 2008); *Luevano v. Clinton*, No. 2:08-cv-1360 (N.D.N.Y. Apr. 4, 2008); *Luevano v. Board of Disciplinary Appeals*,

No. 5:08-cv-107 (W.D. Tex. March 20, 2008).

As a result of his frivolous and abusive filings, Luevano has been sanctioned more than once by the courts in the Western District of Texas. See *Luevano v. Office of Inspector General*, No. 5:11-cv-131 (W.D. Tex. Feb. 28, 2011) (imposing a \$100.00 sanction and barring further civil actions until that amount is paid); *Luevano v. United States District Judge of Abilene, Tex.*, No. 6:12-cv-49 (W.D. Tex. Mar. 5, 2012) (imposing an additional \$100.00 sanction, barring further civil actions, and directing Luevano to disclose his litigation history with any attempt to open a new case “in any United States District Court”). Luevano has likewise been sanctioned by District Judge Nancy F. Atlas in this Court. See *Luevano v. State of Texas*, 4:12-cv-03775, Dkt. No. 3 (listing the sanctions previously imposed against Luevano, imposing new sanctions in the amount of \$350.00, and entering a preclusion order against him). As a result of Judge Atlas’s order, Luevano is barred from filing “any civil action, petition or complaint in this district without written permission from a judicial officer” until all sanctions are paid. (*Id.* at 5).

This mandamus petition is Luevano’s first attempt to file a case in the [Victoria] Division of this Court. Court records show that, to date, the sanctions imposed against Luevano have not been satisfied. Luevano provides nothing to indicate he has attempted either to satisfy any of the sanctions imposed against him or to obtain proper written consent to file this action. In

view of Luevano's lengthy record of abusive filings, the Court will not grant him permission to proceed and will instead dismiss this case as barred by the sanctions imposed against him previously. *See Balawajder v. Scott*, 160 F.3d 1066, 1067 (5th Cir. 1999).

Luevano v Medical Offices, Civil Action Number 6:21-cv-00023, 2021 WL 2411227, *1-2 (SD Tex June 2021).

Luevano filed the instant pleading apparently challenging his criminal convictions. Dkt 1. A closer examination reveals that he's trying to avoid the three-strikes bar of 28 USC § 1915(g) by including both *habeas corpus* and civil rights claims.

Court records show that Luevano hasn't paid the sanctions imposed against him in the Western District of Texas in Civil Action Numbers 5:11-cv-131 and 6:12-cv-49. He also hasn't paid the sanction imposed by Judge Atlas in Civil Action Number 4:12-cv-03775. He doesn't otherwise establish that he has paid the sanctions. Nor has he obtained written permission to file this action.

Luevano is refused permission to proceed here with this litigation based on his lengthy record of abusive filings.

The complaint by Plaintiff Jaime Luevano is DISMISSED WITHOUT PREJUDICE as barred by outstanding sanctions.

The constructive motion to proceed *in forma pauperis* is DENIED. Dkt 1.

Any other motions are DENIED AS MOOT.

The Clerk of Court must SEND 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.

SO ORDERED.

Signed on April 29, 2022, at Houston, Texas.


Hon. Charles Eskridge
United States District Judge