

Appendix B

United States Court of Appeals
for the Fifth Circuit

No. 22-20246

MICHAEL G. PETERS; DALTON G. PETERS,

Plaintiffs—Appellants,

versus

UNITED STATES; U.S. SOUTHERN DISTRICT COURT; GEORGE
C. HANKS, JR.; SIM LAKE,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:22-CV-762

CLERK'S OFFICE:

Under 5TH CIR. R. 42.3, the appeal is dismissed as of June 29, 2022, for want of prosecution. The appellants 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

Appendix "A"

United States District Court
Southern District of Texas

Southern District of Texas

ENTERED

March 21, 2022

Nathan Ochsner, Clerk

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

MICHAEL G. PETERS and
DALTON G. PETERS,

§§§§§
wrote Carl 3-28-2022
for copy?
CIVIL ACTION NO. H-22-762

V.

Plaintiffs,

CIVIL ACTION NO. H-22-762

UNITED STATES, *et al.*

Defendants.

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IV

MEMORANDUM AND OPINION

Michael G. Peters is an inmate in the Texas Department of Criminal Justice. In this suit under 42 U.S.C. § 1983, he and his minor son allege that two federal judges, the United States District Court, and the United States participated in a conspiracy to unjustly imprison Michael G. Peters. The plaintiffs have not paid the filing fee. This action will be dismissed under 28 U.S.C. § 1915(e) and (g).

Under the Prison Litigation Reform Act of 1995, a prisoner may not file an action without prepayment of the filing fee barring a show of imminent danger if he has, on three or more prior occasions, filed a prisoner action in federal district court or an appeal in a federal court of appeals which was dismissed as frivolous or malicious. 28 U.S.C. § 1915(g); *Adepegba v. Hammons*, 103 F.3d 383, 385 (5th Cir. 1996). Michael G. Peters had at least 13 such dismissals before filing his complaint in this case, and is no longer allowed to proceed without prepayment of fees. *See Peters v. Abbott*, No. 4:21-cv-3731 (S.D. Tex. Nov. 15, 2021); *Peters v. Texas Department of Criminal Justice*, No. 4:21-cv-3039 (S.D. Tex. Sept. 23, 2021); *Peters v. TDCJ*, No. 4:21-cv-2447 (S.D. Tex. July 29, 2021); *Peters v. Texas Department of Criminal Justice*, No. 3:21-cv-14 (S.D. Tex. Feb. 1, 2021); *Peters v. Texas Medical Board*, 4:15-cv-3021 (S.D. Tex. Oct. 30, 2015); *Peters v. Rollins*, 4:15-cv-3036 (S.D. Tex. Oct. 27, 2015); *Peters v. Valigura*, 4:15-cv-3023 (S.D. Tex. Oct. 26,

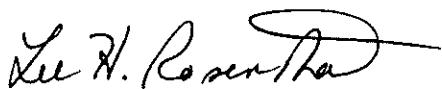
2015); *Peters v. Duckworth*, 4:15-cv-3024 (S.D. Tex. Oct. 22, 2015); *Peters v. Harrison*, 4:15-cv-3037 (S.D. Tex. Oct. 19, 2015); *Peters v. BB&T Bank*, No. 4:15-cv-3035 (S.D. Tex. Oct. 15, 2015); *Peters v. Dreyer*, 4:15-cv-2899 (S.D. Tex. Oct. 14, 2015); *Peters v. Dreyer*, 4:15-cv-2900 (S.D. Tex. Oct. 6, 2015); *Peters v. Gilbert*, 4:15-cv-2762 (S.D. Tex. Oct. 1, 2015). Peters's allegations do not plead any facts showing that he is in any immediate danger which would warrant waiver of the fee requirement. *See Choyce v. Dominguez*, 160 F.3d 1068, 1071 (5th Cir. 1998); *Banos v. O'Guin*, 144 F.3d 883, 884 (5th Cir. 1998).

The other plaintiff, Peters's minor son, is presumably not incarcerated. When a plaintiff proceeds *in forma pauperis*, 28 U.S.C. § 1915(e) requires a federal district court to dismiss a case if the action fails to state a claim on which relief may be granted. Section 1915(e)(2)(B)(i) requires dismissal if the action is frivolous or malicious.

“In order to avoid dismissal for failure to state a claim, a plaintiff must plead specific facts, not mere conclusory allegations” *Elliott v. Foufas*, 867 F.2d 877, 881 (5th Cir.1989). The complaint is wholly conclusory; while the plaintiffs claim a conspiracy, they plead no facts that would, if true, demonstrate the existence of any such conspiracy. They also plead no facts demonstrating that Dalton Peters suffered any injury as a result of the alleged conspiracy.

In light of the pleadings and Michael G. Peters's litigation history, Peters fails to show that he is eligible to proceed without prepayment of fees. Both plaintiffs fail to assert a claim that has any legal basis. Consequently, this action is dismissed pursuant to 28 U.S.C. § 1915(g) and 28 U.S.C. § 1915(e). This dismissal counts as a strike for Michael G. Peters under section 1915(g).

SIGNED on March 21, 2022, at Houston, Texas.



Lee H. Rosenthal
Chief United States District Judge