FILED: September 29, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-6388
(5:21-ct-03191-M)

HARRY SHAROD JAMES

Plaintiff - Appellant

v.

UNITED STATES OF AMERICA

Defendant - Appellee

O R D E R

The court dismisses this proceeding for failure to prosecute pursuant to Local Rule 45.

For the Court--By Direction

/s/ Patricia S. Connor, Clerk

Appendix A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:21-CT-3191-M

HARRY SHAROD JAMES, Plaintiff,	)	
v.	)	ORDER
UNITED STATES, Defendant.	)	

Plaintiff, a state inmate proceeding pro se, filed this civil rights action pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). The matter is now before the court on its own initiative for reconsideration of its August 19, 2021, order allowing plaintiff to proceed without prepayment of fees and, alternatively, for initial review. Also before the court are plaintiff's motions to waive unlawful filing fee (D.E. 5), to amend (D.E. 9), in opposition to filing fee (D.E. 10), challenging jurisdiction (D.E. 11), to amend motion challenging jurisdiction (D.E. 15), and supplemental motion (D.E. 16).

BACKGROUND

Plaintiff filed his complaint on June 30, 2021. Plaintiff alleges defendant violated the following: (1) Article III and Article VI of the United States Constitution, (2) the Fourth, Fifth, Eighth, and Eleventh Amendments of the United States Constitution, (3) Articles One, Two, Three, Five, Six, Seven, and Eight of the Universal Declaration of Human Rights, and (4) "49 statute 3097 Treaty Series 881 (convention of Rights and Duties of States)." (Compl. (D.E. 1) at 4). Plaintiff's factual allegations are not the model of clarity, but it appears he is challenging being charged filing fees in other cases he has submitted to the court. (See id. at 5–6, 8). Plaintiff

alleges defendant charged him "unlawful [t]ender in payment of a debt," and on February 26, 2019, April 10, 2019, and February 17, 2021, he "had a lien placed against his prison account along with tender being withdrawn in advance to [p]ay the filing fees." (Id. at 5). He argues gold and silver are the only "lawful tender." (Id.). Plaintiff further alleges he was charged filing fees after submitting an in forma pauperis application. (Id.). Plaintiff sues defendant in its official capacity. As relief, plaintiff seeks: (1) a jury trial; (2) "[d]eclaration – [e]xplaining the unlawful taking of my money and charging me unlawful [t]ender"; (3) "[p]ermanent [i]njunction – ordering the [l]iens to be taken off my accounts and give back all money they took from me"; (4) "[c]ompensatory [d]amages in the amount of [one] million [d]ollars in gold [b]ullion"; (5) [p]unitive [d]amages in the amount of [one] million [d]ollars in gold [b]ullion"; (6) "[j]udgment [l]ien against [d]efendants"; and (7) any other relief the court deems necessary. (Id. at 7).

COURT'S DISCUSSION

A. Motion to Amend Complaint (D.E. 9)

Plaintiff's motion is summarily granted. See Fed. R. Civ. P. 15(a); See Scinto v. Stansberry, 507 F. App'x 311, 312 (4th Cir. 2013) ("[T]he doctrine of futility only applies when the plaintiff seeks leave of court to amend and does not have a right to amend. The plaintiff's right to amend once is absolute.") (quotation omitted); see also Fox v. Magna, No. 5:15-CT-3294-FL, 2016 WL 843280, at*1 (E.D.N.C. Mar. 1, 2016) (granting motion to amend as a matter of course although it was futile). Therefore, plaintiff's motion is granted, and the court reviewed and considered the claims in the original and amended complaints.

B. Reconsideration of the August 19, 2021, Order

The court next addresses the reconsideration of its August 19, 2021, order. The three-

strikes provision of the Prison Litigation Reform Act ("PLRA") precludes a prisoner from proceeding without prepayment of fees 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.

28 U.S.C. § 1915(g); see Tolbert v. Stevenson, 635 F.3d 646, 650–51 (4th Cir. 2011); Green v. Young, 454 F.3d 405, 406–10 (4th Cir. 2006); Altizer v. Deeds, 191 F.3d 540, 544 (4th Cir. 1999).

Prior to filing the instant complaint, plaintiff has filed at least three actions that a federal court has dismissed as frivolous, malicious, or for failing to state a claim upon which relief may be granted. See James-El v. United States, No. 1:20-CV-762, 2020 WL 7028926 (M.D.N.C. Nov. 10, 2020), R. & R. adopted, 2020 WL 7024883 (M.D.N.C. Nov. 30, 2020); James v. Cooper, No. 5:19-CT-3029-BO, 2020 WL 4917642 (E.D.N.C. Aug. 7, 2020), aff'd, 860 F. App'x 40 (4th Cir. 2021), cert. denied, 142 S. Ct. 799 (2022); James-El v. People's Republic of China, No. 1:20-CV-517, 2020 WL 3618961 (M.D.N.C. July 2, 2020); see also James-El v. Peoples' Republic of China, No. 5:22-CT-3007-D, (E.D.N.C. Mar. 4, 2022) (collecting cases, finding plaintiff had three strikes under the PLRA, and, in the alternative, dismissing the action as frivolous).

The imminent danger "exception focuses on the risk that the conduct complained of threatens continuing or future injury, not on whether the inmate deserves a remedy for past misconduct." Martin v. Shelton, 319 F.3d 1048, 1050 (8th Cir. 2003); see also Chase v. O'Malley, 466 F. App'x 185, 186 (4th Cir. 2012); Smith v. Wang, 370 F. App'x 377, 378 (4th Cir. 2010). Vague, speculative, or conclusory allegations are insufficient to invoke this exception; rather, the inmate must make "specific fact allegations of ongoing serious physical injury, or of a pattern of misconduct evidencing the likelihood of imminent serious physical injury." Martin,

319 F.3d at 1050. Plaintiff makes no allegation of serious physical injury. Accordingly, the court vacates its August 19, 2021, order allowing plaintiff to proceed without prepayment of fees.

C. Initial Review

In the alternative, the court dismisses this action for failure to state a claim. When a prisoner seeks leave to proceed in forma pauperis, a court must review the complaint and dismiss the action if it is frivolous, malicious, or fails to state a claim upon which relief may be granted. 28 U.S.C. § 1915(e)(2)(B). A frivolous case "lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989). Legally frivolous claims are "based on an indisputably meritless legal theory and include claims of infringement of a legal interest which clearly does not exist." Adams v. Rice, 40 F.3d 72, 75 (4th Cir. 1994) (quotations omitted). Factually frivolous claims lack an "arguable basis" in fact. Neitzke, 490 U.S. at 325.

The standard used to evaluate the sufficiency of a pleading is flexible, and a pro se complaint, "however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." Erickson v. Pardus, 551 U.S. 89, 94 (2007) (quotation omitted). A pro se plaintiff's pleading, however, must contain "more than labels and conclusions," see Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007); Giarratano v. Johnson, 521 F.3d 298, 304 n.5 (4th Cir. 2008), and the court need not accept as true any legal conclusions or unwarranted factual inferences, see Ashcroft v. Iqbal, 556 U.S. 662, 677–83 (2009); Coleman v. Md. Court of Appeals, 626 F.3d 187, 190 (4th Cir. 2010), aff'd, 132 S. Ct. 1327 (2012).

Under Bivens, "victims of a constitutional violation by a federal agent have a right to recover damages against the official in federal court despite the absence of any statute conferring such a right." See Carlson v. Green, 446 U.S. 14, 18 (1980) (citing Bivens, 403 U.S. at 394

(1971)). "The purpose of Bivens is to deter individual federal officers from committing constitutional violations." Corr. Servs. Corp. v. Malesko, 534 U.S. 61, 70 (2001).

"It is axiomatic that the United States may not be sued without its consent and that the existence of consent is a prerequisite for jurisdiction." United States v. Mitchell, 463 U.S. 206, 212 (1983); see also F.D.I.C. v. Meyer, 510 U.S. 471, 475 (1994) ("Absent a waiver, sovereign immunity shields the Federal Government and its agencies from suit."). The United States has not waived its sovereign immunity in in this case. Accordingly, plaintiff's claims fail.

Even if plaintiff had named a proper defendant, his claims still fail. As noted, plaintiff alleges he was charged a filing fee although he was allowed to proceed in forma pauperis. However, courts are required to charge plaintiff a filing fee. See 28 U.S.C. § 1915(b)(1) ("[I]f a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee."). Plaintiff further argues that the only legal tender he could be charged had to be in gold or silver. However, there is no such requirement. See The Legal Tender Cases, 110 U.S. 421, 450 (1884) (holding "the tender in treasury notes, reissued and kept in circulation . . . was a tender of lawful money in payment of the defendant's debt to the plaintiff"). Accordingly, plaintiff fails to state a claim, and the court dismisses the claims.

CONCLUSION

Based on the foregoing, the court GRANTS plaintiff's motion to amend (D.E. 9). The court DISMISSES plaintiff's complaint for failure to state a claim, VACATES its August 19, 2021, order (D.E. 13), and DENIES plaintiff's motion to proceed without prepayment of fees (D.E. 4).

Plaintiff's remaining motions are DENIED AS MOOT. The clerk is DIRECTED to close this case.

SO ORDERED, this the 21st day of March, 2022.

Richard E Myers II

RICHARD E. MYERS, II
Chief United States District Judge