APPENDIX

A

N.D.N.Y.
24-cv-74
Sannes, C.J.
Lovric, M.J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 19th day of September, two thousand twenty-four.

Present:

Gerard E. Lynch,
Beth Robinson,
Sarah A. L. Merriam,
Circuit Judges.

David C. Lettieri,

Plaintiff-Appellant,

v. 24-1083

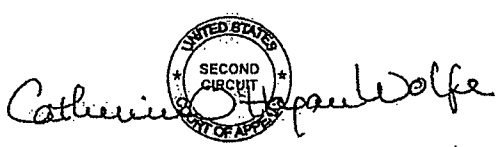
City of Binghamton, et al.,

Defendants-Appellees.

Appellant appeals the district court's judgment dismissing his claims for failure to pay the filing and administrative fee within thirty (30) days after the court concluded that he was ineligible to proceed without the prepayment of fees (that is, in forma pauperis, or "IFP"). The court denied Appellant's request for IFP status based on the "three strikes rule" in 28 U.S.C. § 1915(g). He moves in this court for IFP status in connection with his appeal, and for assignment of counsel. We conclude that he is ineligible for IFP status on appeal on the basis of the same "three strikes" bar identified by the district court. In addition, we conclude that any challenge on appeal to the district court's denial of IFP status would be frivolous.

For these reasons, it is hereby ORDERED that the motion for IFP status is DENIED and the appeal is DISMISSED because it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see* 28 U.S.C. § 1915(e).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court



APPENDIX

B

DAVID C. LETTIERI, Plaintiff, v. CITY OF BINGHAMTON; CITY OF BINGHAMTON CODE ENFORCEMENT; and BINGHAMTON POLICE, Defendants.
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK
2024 U.S. Dist. LEXIS 64324
3:24-CV-74 (BKS/ML)
April 9, 2024, Decided
April 9, 2024, Filed

Editorial Information: Prior History

Lettieri v. City of Binghamton, 2024 U.S. Dist. LEXIS 66738 (N.D.N.Y., Jan. 26, 2024)

Counsel **{2024 U.S. Dist. LEXIS 1}**David C. Lettieri, Plaintiff, Pro se, Lockport, NY.

Judges: Brenda K. Sannes, Chief United States District Judge.

Opinion

Opinion by: Brenda K. Sannes

Opinion

Brenda K. Sannes,

Chief U.S. District Judge

DECISION & ORDER

Plaintiff filed this action pursuant to 42 U.S.C. § 1983, alleging that Defendants, the City of Binghamton, New York and two municipal departments in that City, violated his constitutional rights by failing to protect his home from unlawful seizure and destruction at the hands of "squatters." He seeks "$1,000,0000,000 for civil rights violations and a new house built." The Court referred the matter to the Hon. Miroslav Lovric, United States Magistrate Judge, for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c)).

The Report-Recommendation and Order, dated January 26, 2024, denies Plaintiff's motion to proceed *in forma pauperis* with prejudice and recommends that the Court order Plaintiff to pay the $405.00 filing fee within thirty days or face dismissal of the case without prejudice and without further order of the Court. See dkt. # 4. Judge Lovric finds that Plaintiff failed properly to complete the form seeking leave to proceed *in forma pauperis* and has thus failed to demonstrate economic need. Noting that Plaintiff is an inmate, however,**{2024 U.S. Dist. LEXIS 2}** Judge Lovric also explored whether the "three strikes" provision in 28 U.S.C. § 1915(g) bars Plaintiff from proceeding in this action *in forma pauperis*. Judge Lovric noted that Plaintiff had filed seventy-seven previous cases, a number of them in the Northern District of New York, but most of the others either in the Western District of New York or the District of Ohio. Finding that the "three strikes" provision applied, Judge Lovric concluded that Plaintiff needed to demonstrate that the "imminent danger exception" applied if he hoped to proceed without paying the filing fee in this case. Judge Lovric examined the allegations in the Complaint and found that no such exception applied. Finally, after examining the Plaintiff's extensive and vexatious litigation history, Judge Lovric recommended that the Court refer the matter

to the undersigned to consider issuing a filing injunction for Plaintiff.

Plaintiff filed objections to the Report-Recommendation. See dkt. # 5. When a party objects to a magistrate judge's Report-Recommendation, the Court makes a "*de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." See 28 U.S.C. § 636(b)(1). After such a**{2024 U.S. Dist. LEXIS 3}** review, the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions." Id.

Having reviewed the record *de novo* and having carefully considered Plaintiff's objections, the Court accepts and adopts the recommendation of Judge Lovric for the reasons stated therein. Plaintiff has not identified any valid objection to Magistrate Judge Lovric's determinations: that the "three strikes" provision applies and that Plaintiff's claim, seeking damages from an alleged December 31, 2022 event, does not fall within the "imminent danger exception."

Accordingly, it is hereby:

ORDERED that the Report-Recommendation, dkt. # 4 is adopted; and it is further

ORDERED that if Plaintiff wishes to proceed with this action, he must pay the $405.00 filing and administrative fee within thirty (30) days of the date of this Order. If Plaintiff fails to pay the $405.00 fees by that date, the Clerk of Court shall dismiss the case without prejudice and without further order of Court. The Court will consider, in a separate decision, Magistrate Judge Lovric's**{2024 U.S. Dist. LEXIS 4}** recommendation that a pre-filing injunction be issued against the Plaintiff.

IT IS SO ORDERED.

Dated: April 9, 2024

/s/ Brenda K. Sannes

Brenda K. Sannes

Chief U.S. District Judge

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