ATTACHMENT A

No. 25-1547

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Feb 5, 2026
KELLY L. STEPHENS, Clerk

ROBERT ANNABEL II,

Plaintiff-Appellant,

v.

NORBERT FRONCZAK; LAWRENCE MCKINNEY,

Defendants-Appellees.

ORDER

Before: GRIFFIN, Circuit Judge.

Robert Annabel II, a pro se Michigan prisoner, appeals the district court's judgment that denied his motion to proceed in forma pauperis (IFP) and dismissed his complaint pursuant to the three-strikes provision of the Prison Litigation Reform Act (PLRA), 28 U.S.C. § 1915(g). Pursuant to Federal Rule of Appellate Procedure 24(a)(5), Annabel moves to proceed IFP on appeal. As set forth below, the motion is denied.

Along with a motion to proceed IFP, Annabel filed a complaint against the librarian and assistant deputy warden at the prison where he is incarcerated. Seeking declaratory and monetary relief, he sought to raise a First Amendment retaliation claim against each defendant.

The district court denied Annabel's IFP motion and dismissed his complaint without prejudice under the PLRA's three-strikes provision, finding that he filed at least three prior cases that the district court dismissed for failure to state a claim or as frivolous and that he did not fall within the statutory exception to the three-strikes provision because he failed to allege that he was in "imminent danger of serious physical injury." Thereafter, the district court denied Annabel's Federal Rule of Civil Procedure 60(b) motion for relief from judgment.

Ordinarily, this court may grant a motion to proceed IFP if it determines that an appeal would be taken in good faith and the movant is indigent. *Owens v. Keeling*, 461 F.3d 763, 776 (6th Cir. 2006). A prisoner is prohibited from proceeding IFP on appeal, however, when he has filed three or more previous lawsuits or appeals that were dismissed as frivolous, as malicious, or for failure to state a claim for relief. 28 U.S.C. § 1915(g). "This language suggests that all claims in a complaint, not just some of them, must be dismissed on grounds listed in [§ 1915(g)] for the dismissal to count as a strike." *Crump v. Blue*, 121 F.4th 1108, 1111 (6th Cir. 2024). The three-strikes prohibition does not apply if the prisoner "is under imminent danger of serious physical injury" when the complaint or appeal is filed. 28 U.S.C. § 1915(g).

As discussed below, Annabel indeed has three strikes under the PLRA so he is prohibited from proceeding IFP on appeal.

First, in *Annabel v. Shertz*, the district court dismissed all claims in Annabel's complaint for failure to state a claim. No. 2:07-cv-30, 2007 WL 1455913, at *1-2 (W.D. Mich. May 16, 2007). This court ruled in a prior appeal that *Annabel v. Shertz* counts as a strike under the PLRA. *See Annabel v. Jackson County*, No. 22-2071, 2023 U.S. App. LEXIS 8140, at *2-3 (6th Cir. Apr. 5, 2023). Annabel disagrees, arguing that *Annabel v. Shertz* does not count as a strike because his claims in that case were dismissed for failure to state a claim based on the defendants' Eleventh Amendment sovereign immunity, which, as set forth in *Crump*, 121 F.4th at 1112-13, is not grounds for dismissal under the PLRA. Annabel is correct that, pursuant to *Crump*, a dismissal based on sovereign immunity does not count as a strike. *Id.* But in *Annabel v. Shertz*, the district court dismissed Annabel's claims for failure to state a claim for two independent reasons—because the defendants (1) were not "persons" subject to suit under 42 U.S.C. § 1983, and (2) were entitled to Eleventh Amendment sovereign immunity. 2007 WL 1455913, at *1-2. Because the district court dismissed the action for failure to state a claim on the ground that the defendants were not "persons" who could be sued in a § 1983 action, the court finds—as it previously did—that *Annabel v. Shertz* counts as a strike under the PLRA. *See* 28 U.S.C. § 1915(g).

Second, in *Annabel v. Washington*, the district court dismissed all claims in Annabel's complaint for failure to state a claim. No. 1:24-cv-97, 2024 WL 1108754, at *1, *4-13 (W.D. Mich. Mar. 13, 2024), *aff'd*, No. 24-1425, 2024 WL 4766187 (6th Cir. Oct. 2, 2024), *cert. denied*, 145 S. Ct. 1908 (2025). This case counts as a strike under the PLRA. *See* 28 U.S.C. § 1915(g).

Third, in *Annabel v. Novak*, this court determined that Annabel's appeal was not taken in good faith—i.e., was frivolous—and denied him leave to proceed IFP on appeal. No. 22-1867, 2023 U.S. App. LEXIS 10721, at *2-3 (6th Cir. May 2, 2023). Thereafter, this court dismissed the appeal for want of prosecution because Annabel failed to pay the filing fee as directed. The district court determined that *Annabel v. Novak* counts as a strike because the appeal was dismissed as frivolous for failure to prosecute. This court previously held that failure to prosecute by failing to pay a filing fee alone does not count as a strike. *See Boles v. Matthews*, 1999 WL 183472, at *2 (6th Cir. 1999) (unpublished). However, the dismissals in *Boles* made no "reference to the nature of the underlying action or appeal as frivolous, malicious or one that fails to state a claim for relief." *Id.* But in *Annabel v. Novak*, we explicitly found the action was frivolous and not taken in good faith. 2023 U.S. App. LEXIS 10721, at *2-3. Annabel's opportunity to pay the filing fee does to change the fact that the appeal was dismissed for being frivolous. Several circuits have applied the same approach. *See Burrell v. Shirley*, 142 F.4th 239, 249-50 (4th Cir. 2025) (finding that although "straight failure-to-prosecute and failure-to-comply dismissals are not § 1915(g) strikes," dismissal for failure to prosecute counts as a strike when the court dismisses for failure to state a claim, grants leave to amend, and the plaintiff fails to file an amended complaint); *Harris v. Mangum*, 863 F.3d 1133, 1141–42 (9th Cir. 2017) (same); *Hafed v. Fed. Bureau of Prisons*, 635 F.3d 1172, 1179 (10th Cir. 2011) (holding that the circuit court's dismissal of a prisoner's appeal for failure to prosecute was a strike where the circuit court's prior denial of IFP on the basis of frivolousness was "the 'but for' cause of that court's subsequent dismissal"); *Thompson v. Drug Enf't Admin.*, 492 F.3d 428, 433 (D.C. Cir. 2007) (holding that it would be "hypertechnical" to not assess a strike for an appeal that was formally dismissed for failure to

prosecute when the underlying reason for the dismissal was a finding of frivolousness). So this case counts as Annabel's third strike under the PLRA. *See* 28 U.S.C. § 1915(g).

Annabel's motion for leave to proceed IFP therefore is **DENIED**. Unless Annabel pays the $605 filing fee to the district court within thirty days of the entry of this order, this appeal will be dismissed for want of prosecution.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

Kelly L. Stephens, Clerk

ATTACHMENT B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT ANNABEL, II,

Plaintiff,

Case No. 2:25-CV-11389

v.

UNITED STATES DISTRICT COURT JUDGE
GERSHWIN A. DRAIN

NORBERT FRONCZAK, *et al.*,

Defendants,

/

OPINION AND ORDER DISMISSING COMPLAINT PURSUANT TO 28 U.S.C. § 1915(g)

This matter is before the Court on Plaintiff Robert Annabel II's *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983. Plaintiff is a state prisoner incarcerated at the Macomb Correctional Facility in New Haven, Michigan. Upon review of plaintiff's case and his litigation history in the federal courts, this Court concludes that his civil rights complaint must be dismissed without prejudice pursuant to 28 U.S.C. § 1915(g).

I. BACKGROUND

Title 28 U.S.C. § 1914(a) provides that "[t]he clerk of each district court shall require the parties instituting any civil action, suit or proceeding in such court, whether by original process, removal or otherwise, to pay a filing fee of $350 ...." *See also Owens v. Keeling,* 461 F. 3d 763, 773 (6th Cir. 2006). Plaintiff failed to provide the $350.00 filing fee, plus a $ 55.00 administrative fee, when he filed his

complaint. The Prisoner Litigation Reform Act of 1995 (PLRA) states that "if 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." 28 U.S.C. § 1915(b)(1)(as amended). *See also In Re Prison Litigation Reform Act,* 105 F.3d 1131, 1138 (6th Cir. 1997). The *in forma pauperis* statute, 28 U.S.C. § 1915(a), gives prisoners the opportunity to make a "downpayment" of a partial filing fee and pay the remainder in installments. *See Boussum v. Washington,* 649 F. Supp. 3d 525, 529 (E.D. Mich. 2023); *reconsideration denied,* 655 F. Supp. 3d 636 (E.D. Mich. 2023).

A search of federal court records indicates that plaintiff had three cases that have been dismissed for being frivolous, malicious, or for failing to state a claim upon which relief could be granted. *See Annabel v. Washington,* No. 1:24-cv-97, 2024 WL 1108754 (W.D. Mich. Mar. 13, 2024), *aff'd*, No. 24-1425, 2024 WL 4766187 (6th Cir. Oct. 2, 2024), *cert. denied*, No. 24-6524, 2025 WL 1020405 (U.S. Apr. 7, 2025); *Annabel v. Michigan Department of Corrections*, No. 1:14-cv-756, 2014 WL 4187675 (W.D. Mich. Aug. 21, 2014); *Annabel v. Shertz,* No. 2:07-cv-30, 2007 WL 1455913 (W.D. Mich. May 16, 2007). [1]

[1] The United States Court of Appeals for the Sixth Circuit in a previous case specifically found that these last two cases count as "strikes" under § 1915(g). *See Annabel v. Jackson County, MI, Sheriff Department, et. al.,* No. 22-2071, * 2 (6th Cir. Apr. 5, 2023).

II. DISCUSSION

Plaintiff has requested to proceed without prepayment of fees.

28 U.S.C. § 1915(g), however, states that:

> In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section 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.

Under 28 U.S.C. § 1915(g), a federal court shall dismiss a case if, on 3 or more previous occasions, a federal court dismissed the incarcerated plaintiff's action because it was frivolous or malicious or failed to state a claim for which relief may be granted. *Thaddeus-X v. Blatter*, 175 F. 3d 378, 400 (6th Cir. 1999); *Witzke v. Hiller,* 966 F. Supp. 538, 540 (E.D. Mich. 1997)(Gadola, J.). The three strikes provision of the PLRA prohibits a prisoner from proceeding *in forma pauperis* in a civil rights suit absent an allegation that the prisoner is in imminent danger of serious physical injury. *See Clemons v. Young,* 240 F. Supp. 2d 639, 641 (E.D. Mich. 2003)(Lawson, J.). A federal district court may *sua sponte* raise the three strikes provision of the PLRA on its own initiative. *Witzke,* 966 F. Supp. at 539. The federal courts in general, and this Court in particular, can take judicial notice of a plaintiff's prior dismissals for purposes of § 1915(g). *See Taylor v. United States*, 161 F. App'x 483, 485-86 (6th Cir. 2005).

Plaintiff has three prior civil rights complaints which were dismissed by a federal district court pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b) for being frivolous, malicious, or failing to state a claim upon which relief could be granted. Moreover, plaintiff did not allege any facts which would establish that he is in imminent danger of serious physical injury, and thus, he does not come within the exception to the mandate of 28 U.S.C.§ 1915(g), which prohibits him from proceeding *in forma pauperis* in light of his three prior strikes. *Gresham v. Meden*, 938 F.3d 847, 849 (6th Cir. 2019).

Plaintiff's civil rights complaint is subject to dismissal pursuant to § 1915(g). Plaintiff, may, however, resume any of the claims dismissed under § 1915(g) if he decides to pay the filing fee under the fee provisions of 28 U.S.C. § 1914. *Witzke,* 966 F. Supp. at 540.

Plaintiff's three strikes under § 1915(g) bars him from appealing *in forma pauperis*. *See Drummer v. Luttrell*, 75 F. Supp. 2d 796, 805-806 (W.D. Tenn. 1999). The Court declines to certify that any appeal from this dismissal would be in good faith.

III. ORDER

IT IS HEREBY ORDERED that Plaintiff Robert Annabel, II's *in forma pauperis* status is **DENIED** and the complaint (ECF No. 1) is **DISMISSED** pursuant to 28 U.S.C. § 1915(g).

IT IS FURTHER ORDERED AND CERTIFIED that any appeal taken by plaintiff would not be done in good faith.

SO ORDERED.

Dated: May 19, 2025

/s/Gershwin A. Drain
GERSHWIN A. DRAIN
United States District Judge

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on May 19, 2025, by electronic and/or ordinary mail.
/s/ Marlena Williams
Case Manager

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT ANNABEL, II,

Plaintiff,

Case No. 2:25-CV-11389

v.

UNITED STATES DISTRICT COURT JUDGE
GERSHWIN A. DRAIN

NORBERT FRONCZAK, *et al.*,

Defendants.
_____/

JUDGMENT

The above-entitled matter having come before the Court on a Prisoner Civil Rights Complaint and in accordance with the Memorandum Opinion and Order entered on this date:

IT IS ORDERED AND ADJUDGED that:

(1): The Complaint is DISMISSED WITHOUT PREJUDICE PURSUANT TO 28 U.S.C. § 1915(g).

(2) IT IS FURTHER CERTIFIED that any appeal would not be undertaken in good faith.

Dated at Detroit, Michigan, this 19th, day of May, 2025.

KINIKIA ESSIX
CLERK OF THE COURT
BY: /s/Marlena Williams
CASE MANAGER

APPROVED:
/s/Gershwin A. Drain
HON. GERSHWIN A. DRAIN
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on May 19, 2025, by electronic and/or ordinary mail.

/s/ Marlena Williams

Case Manager

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT ANNABEL, II,

Plaintiff,

v.

Case No.: 25-cv-11389
Hon. Gershwin A. Drain

NORBERT FRONCZAK, *et al.*,

Defendants.
_____/

ORDER DENYING PLAINTIFF'S MOTION FOR RELIEF FROM JUDGMENT [#7] AND DENYING LEAVE TO PROCEED *IN FORMA PAUPERIS* ON APPEAL [#8]

On April 19, 2025, this Court dismissed this action without prejudice because *pro se* Plaintiff, a prisoner, has filed three prior civil rights complaints which were dismissed by a federal district court for being frivolous, malicious, or for failing to state a claim upon which relief could be granted. *See* ECF No. 5, PageID.185. Now before the Court is the Plaintiff's Rule 60 Motion for Relief from Judgment, filed on June 3, 2025. In his present motion, Plaintiff argues that this Court erroneously concluded Plaintiff's three prior lawsuits counted as strikes precluding his ability to proceed *in forma pauperis* in this action. For the reasons that follow, the Court denies Plaintiff's Motion for Relief from Judgment. Also, before the Court is Plaintiff's Application to Proceed in Forma Pauperis on

Appeal. The Court will deny this motion because an appeal of this matter would not be taken in good faith.

Under Rule 60(b) of the Federal Rules of Civil Procedure, a party may seek relief from a judgment based on "(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovery evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief." Fed. R. Civ. P. 60(b)(1)-(6). Plaintiff does not identify the basis upon which he moves; however, the gist of Plaintiff's argument is that this Court erroneously concluded he had filed three previous lawsuits that were dismissed as frivolous, malicious or failed to state a claim upon which relief could be granted. As such, the Court construes Plaintiff's present motion to be brought pursuant to Rule 60(b)(1).

Title 28 U.S.C. § 1915(g) denies a prisoner the right to proceed *in forma pauperis* if he has previously brought three actions or appeals that were dismissed because they were frivolous, malicious or failed to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical

injury. *See Lomax v. Ortiz-Marquez*, 590 U.S. 595 (2020)(Title 28 U.S.C. § 1915(g) "bars further IFP litigation once a prisoner has had at least three prior suits dismissed on specified grounds[,]" including for failure to state a claim). Contrary to Plaintiff's argument, this Court did not make a mistake in determining Plaintiff was precluded from proceeding *in forma pauperis* because the three strikes rule bars him from doing so. In its Order dismissing this case without prejudice, the Court determined three prior lawsuits counted as strikes for purposes of § 1915(g).

Specifically, as to *Annabel v. Shertz*, No. 2:07-cv-30, 2007 U.S. Dist. LEXIS 35699 (W.D. Mich. May 16, 2007), the district court dismissed all of Plaintiff's claims as frivolous pursuant to 28 U.S.C. § 1915(a)(3). This dismissal counts as a strike. *Pointer v. Wilkinson*, 502 F.3d 369, 373 (6th Cir. 2007)(dismissals for frivolousness count as a strike). Indeed, the Sixth Circuit Court of Appeals has previously concluded this case qualifies as a strike. *See Annabel v. Jackson Cnty.*, No. 22-2071, 2023 U.S. App. LEXIS 8140, at *3 (6th Cir. Apr. 5, 2023) (concluding the *Annabel v. Shertz* lawsuit "undoubtedly counts as a strike" because "the district court dismissed Annabel's complaint in its entirety as frivolous.").

In *Annabel v. Michigan Dep't of Corr.*, No. 1:14-cv-756, 2014 U.S. Dist. LEXIS 116440 (W.D. Mich. Aug. 21, 2014), the district court dismissed some of the claims and eight defendants for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b). 2014 U.S. Dist. LEXIS 116440, *53. Roughly a

month later, the district court dismissed the remaining claims for failure to prosecute because Plaintiff did not follow the district court's order to pay the partial filing fee and failed to return copies of the Complaint for service upon the remaining defendants. *See Annabel v. Mich. Dep't of Corrections*, W.D.Mich., case number 1:14-cv-756, ECF No. 19. "[W]hen an action is dismissed in its entirety at least in part for § 1915(g) reasons, the plaintiff subsequently bears the burden of proving that the entire action did not fall under § 1915(g) by showing that claims dismissed without prejudice were not frivolous, malicious, or failed to state a claim. Absent a plaintiff later proving this, the action counts as a strike." *Taylor v. First Med. Mgmt.*, 508 F. App'x 488, 496-97 (6th Cir. Dec. 14, 2012).

Here, the dismissal of eight defendants for failure to state a claim, coupled with the subsequent dismissal of the entire case for failure to prosecute, places the burden on Plaintiff to demonstrate that the remaining non-§ 1915(g) claims would not later have been dismissed as frivolous, malicious, or for failure to state a claim. Plaintiff has not met his burden. Absent this showing, *Annabel v. Michigan Dep't of Corr.* counts as a strike. *See Annabel v. Unknown Ericson*, No. 15-10345, 2016 U.S. Dist. LEXIS 205799 (E.D. Mich. Feb. 1, 2016)(concluding *Annabel v. Michigan Dep't of Corr.* counts as a strike for purposes of § 1915(g)). The Sixth

Circuit Court of Appeals has also found *Annabel v. Michigan Dep't of Corr.* counts as a strike. *Annabel*, 2023 U.S. Dist. LEXIS 8140, *3.[1]

Finally, in *Annabel v Washington*, No. 1:24-cv-97, 2024 U.S. Dist. LEXIS 43719 (W.D. Mich. Mar. 13, 2024), the district court dismissed all of Plaintiff's claims for failure to state a claim pursuant to 28 U.S.C. §§ 1915(e)(2) and § 1915A(b) and 42 U.S.C. § 1997e(c). *See Pointer*, 502 F.3d at 373 (noting that dismissals for failure to state a claim count as a strike). The majority of the Plaintiff's argument in support of his present motion is based on Plaintiff's opinion that the district judge in *Annabel v. Washington* reached an erroneous conclusion that he failed to state a claim. This Court has no authority to opine on the correctness of another district judge's decision to dismiss a case for failure to state a claim. *See Fourstar v. Garden City Group, Inc.*, 875 F.3d 1147, 1153 (D.C. Cir. 2017) ("[T]he later district court may not relitigate the underlying merits of [] past dismissals[,]" in other words, "the question of whether a prior district court

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[1] Plaintiff points out that a subsequent panel in *Annabel v. Jackson Cty.*, No. 22-2071, 2023 U.S. App. LEXIS 17397 (6th Cir. Jul. 10, 2024) failed to acknowledge that an April 2024 decision in the same case concluded *Annabel v. Shertz* and *Annabel v. Michigan Dep't of Corr.* counted as strikes for purposes of § 1915(g). Rather, the July panel in *Annabel v. Jackson* confusingly held that "we decline Annabel's invitation to examine whether the other two cases qualify as strikes[,]" even though the April decision in the same case squarely held that the two cases–*Annabel v. Shertz* and *Annabel v. Michigan Dep't of Corr.*–counted as strikes. In any event, this apparent inconsistency does not change this Court's conclusion that *Annabel v. Shertz* and *Annabel v. Michigan Dep't of Corr.* count as strikes.

properly labeled the case as a strike is distinct from the question of whether a prior district court properly dismissed a case for failure to state a claim, or as frivolous or malicious[,]" where "[t]he former is not binding on the later district court; the latter is binding on the later district court."). Moreover, the Sixth Circuit Court of Appeals has affirmed the district judge's dismissal in *Annabel v Washington* under 28 U.S.C. §§ 1915(e)(2) and § 1915A(b) and 42 U.S.C. § 1997e(c) based on a failure to state a claim. *See Annabel v. Washington*, No. 24-1425, 2024 U.S. App. LEXIS 24976 (6th Cir. Oct. 2, 2024).

The Court notes that *Annabel v. Novak* also counts as a strike because the Court of Appeals determined that Annabel's appeal was not taken in good faith, i.e., was frivolous, and denied him leave to proceed on appeal *in forma pauperis*. No. 22-1867, 2023 U.S. App. LEXIS 19721, * (6th Cir. May 2, 2023). When Annabel failed to pay the filing fee, the Sixth Court of Appeals dismissed the case for want of prosecution. This counts as a strike. *See Martin v. Mundy*, No. 2024 U.S. Dist. LEXIS 75587 (S.D. Ohio Apr. 25, 2024) (quoting *Thompson v. Drug Enforcement Admin.*, 492 F.3d 428, 433 (D.C. Cir. 2007)("Where. . . an appeal is formally dismissed for want of prosecution, this dismissal counts as a strike if the court of appeals previously denied a motion to proceed *in forma pauperis* in that case on the basis that the appeal was frivolous.").

Plaintiff also moves to proceed on appeal *in forma pauperis*. This Court has previously certified that any appeal taken by plaintiff would not be done in good faith. *See* ECF No.5, PageID.186. Leave to proceed in forma pauperis on appeal is permitted only if the appellant is indigent and the appeal would be taken in good faith. *See Owens v. Keeling*, 461 F.3d 763, 776 (6th Cir. 2006). Because the Court finds that Plaintiff has filed at least four prior cases that qualify as strikes for purposes of § 1915(g), an appeal would not be taken in good faith.

Accordingly, for the reasons that follow, Plaintiff's Motion for Relief from Judgment [#7] is DENIED.

Plaintiff's Application to Proceed *In Forma Pauperis* on Appeal [#8] is also DENIED.

SO ORDERED.

Dated: June 23, 2025

/s/ Gershwin A. Drain
GERSHWIN A. DRAIN
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on June 20, 2025, by electronic and/or ordinary mail.
/s/ Marlena Williams
Case Manager

ATTACHMENT C

No. 25-1547

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Mar 23, 2026
KELLY L. STEPHENS, Clerk

ROBERT ANNABEL II,

Plaintiff-Appellant,

v.

NORBERT FRONCZAK; LAWRENCE MCKINNEY,

Defendants-Appellees.

ORDER

Before: CLAY, KETHLEDGE, and MATHIS, Circuit Judges.

Robert Annabel II, a pro se Michigan prisoner, petitions the court to rehear en banc its order denying his motion for leave to proceed in forma pauperis on appeal after the district court dismissed his complaint pursuant to the three-strikes provision of the Prison Litigation Reform Act, 28 U.S.C. § 1915(g).

The petition has been referred to this panel, on which the original deciding judge does not sit, for an initial determination on the merits of the petition for rehearing. Upon careful consideration, the panel concludes that the original deciding judge did not misapprehend or overlook any point of law or fact in issuing the order and, accordingly, declines to rehear the matter. Fed. R. App. P. 40(b)(1)(A).

The Clerk shall now refer the matter to all of the active members of the court for further proceedings on the suggestion for en banc rehearing.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

Kelly L. Stephens, Clerk

No. 25-1547

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Apr 7, 2026
KELLY L. STEPHENS, Clerk

ROBERT ANNABEL II,

Plaintiff-Appellant,

v.

NORBERT FRONCZAK; LAWRENCE MCKINNEY,

Defendants-Appellees.

ORDER

Before: CLAY, KETHLEDGE, and MATHIS, Circuit Judges.

Robert Annabel II, a pro se Michigan prisoner, petitions for rehearing en banc of this court's order entered on February 5, 2026, denying his motion for leave to proceed in forma pauperis on appeal after the district court dismissed his complaint pursuant to the three-strikes provision of the Prison Litigation Reform Act, 28 U.S.C. § 1915(g). The petition was initially referred to this panel, on which the original deciding judge does not sit. After review of the petition, this panel issued an order announcing its conclusion that the order denying Annabel's motion for leave to proceed in forma pauperis was properly denied. The petition was then circulated to all active members of the court, none of whom requested a vote on the suggestion for an en banc rehearing. Pursuant to established court procedures, the panel now denies the petition for rehearing en banc.

Unless Annabel pays the $605 appellate filing fee to the district court within 30 days of the entry of this order, this appeal will be dismissed for want of prosecution.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk

Case No. 25-1547

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ORDER

ROBERT ANNABEL, II

Plaintiff - Appellant

v.

NORBERT FRONCZAK; LAWRENCE MCKINNEY

Defendants - Appellees

Appellant having previously been advised that failure to satisfy certain specified obligations would result in dismissal of the case for want of prosecution and it appearing that the appellant has failed to satisfy the following obligation(s):

The proper fee was not paid by May 7, 2026.

It is therefore **ORDERED** that this cause be, and it hereby is, dismissed for want of prosecution.

ENTERED PURSUANT TO RULE 45(a),
RULES OF THE SIXTH CIRCUIT
Kelly L. Stephens, Clerk

Issued: May 22, 2026

Kelly L. Stephens