



McNEIL v. U.S.

2005 | Cited 0 times | E.D. Kentucky | December 7, 2005

MEMORANDUM OPINION AND ORDER

Duncan J. McNeil, III, who is incarcerated in Spokane, Washington, has filed a pro se civil rights complaint and a motion to proceed in forma pauperis. This matter is pending for initial screening. 28 U.S.C. § 2243; *Demjanjuk v. Petrovsky*, 612 F. Supp. 571 (N.D. Ohio 1985) (citing *Allen v. Perini*, 424 F.2d 134, 141 (6th Cir. 1970), cert. denied, 400 U.S. 906(1970)); accord *Aubut v. State of Maine*, 431 F.2d 688, 689 (1st Cir. 1970).

On August 9, 2005, the United States District Court for the Eastern District of Washington entered an Order of Dismissal detailing the plaintiff's extensive history of frivolous filings in more than 70 judicial districts. The Order of Dismissal further indicated that Plaintiff has already received his "three strikes" under 28 U.S.C. § 1915(g)¹ in *Duncan J. McNeil v. Robert H. Whaley, et al.*, 04-371-AAM.

² The court's own research on the PACER system reveals that Mr. McNeil is a plaintiff or party to 237 cases in the federal courts, many of them reciting the same allegations as those raised here. Plaintiff attempts to circumvent Section 1915(g) by asserting a variety of creative but factually false or legally frivolous arguments, e.g., that he was acting as a government actor and is thus entitled to qualified immunity; that he is not a "prisoner" but merely a "civil detainee"; or that he timely appealed all of the "strikes" against him and thus none of them can "count" against him. A review of Plaintiff's allegations in the complaint and the court's own research on the online PACER system establishes that these arguments are meritless. Section 1915(g) does permit a prisoner to bring an action if "the prisoner is under imminent danger of serious physical injury," but the plaintiff has neither alleged any such danger nor provided the court with specific and detailed evidence necessary to conclude that such a danger exists. Plaintiff's complaint must be dismissed with prejudice for failure to state a claim for relief upon which relief may be granted and as frivolous, and the court certifies that any appeal in this case is not taken in good faith and will not be certified for appeal by this court. 28 U.S.C. § 1915(3) and Fed.R.App.P.24(a). CONCLUSION

Accordingly, the court being sufficiently advised, it is hereby ORDERED as follows:

- (1) Duncan J. McNeil, III's motion to proceed in forma pauperis is DENIED.
- (2) This matter is DISMISSED WITH PREJUDICE, and Judgment shall be entered contemporaneously with this Memorandum Opinion and Order in favor of the defendant.

