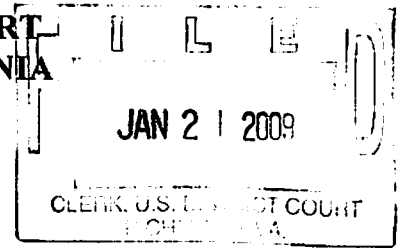


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division



DERRICK JEROME HAWTHORNE,)
)
Plaintiff,)
)
v.)
)
MR. GARRETT,)
)
Defendant.)

Civil Action No. 3:08CV309-HEH

Hawthorne v. Garrett

Doc. 10

MEMORANDUM OPINION
(Dismissing Without Prejudice 42 U.S.C. § 1983 Action)

Plaintiff, a Virginia prisoner, has filed this complaint claiming that the food served to him at the Hampton Roads Regional Jail is often undercooked and unclean. A prisoner is prohibited from proceeding *in forma pauperis*:

[I]f 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). In his affidavit in support of his request to proceed *in forma pauperis*, Plaintiff represented that he did not have any cases that were dismissed as frivolous, malicious, or for failure to state a claim upon which relief could be granted. However, research reveals that Plaintiff has filed at least three cases that were dismissed as frivolous, malicious, or for failure to state a claim upon which relief could be granted. *See Hawthorne v. Governor Don Siegelman*, No. 2:00cv0100 (N.D. Ala. Mar. 2, 2000)

(listing three actions submitted by Plaintiff that counted as strikes under 28 U.S.C. § 1915(g)).

This Court has the discretion to dismiss a case with prejudice when a litigant makes false statements in conjunction with his request to proceed *in forma pauperis*. See *Prescott v. Hall*, No. 4:93cv00046, 4:93cv00040, 1995 WL 805173, at *6 (E.D. Va. June, 14, 1995) (citing *Romesburg v. Trickey*, 908 F.2d 258, 260 (8th Cir. 1990); *Harris v. Cuyler*, 664 F.2d 388, 389-391 (3rd Cir. 1981); *Thompson v. Carlson*, 705 F.2d 868, 869 (6th Cir. 1983); *Davison v. Lennon*, 797 F.2d 934, 935 (11th Cir. 1986)). Nevertheless, considering the strong policy of deciding cases on their merits and the limited resources so far expended by the Court, such an extreme sanction is not warranted here. See *id.* at *8; see also *Sloan v. Lesza*, 181 F.3d 857, 859 (7th Cir. 1999). Accordingly, the action will be DISMISSED WITHOUT PREJUDICE.

An appropriate Order shall accompany this Memorandum Opinion.

Date: Jan. 20, 2005
Richmond, Virginia

<p><i>h</i> _____ <i>h</i> Henry E. Hudson United States District Judge</p>
