

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

JOSEPH M. WALLS,)
)
Plaintiff,)
) C.A. No. N12M-04-115 MMJ
v.)
)
PERRY PHELPS, CASEY PHELPS)
and STANLEY BAYNARD)
)
Defendants.)

Submitted: July 20, 2012
Decided: August 21, 2012

**On State of Delaware's Motion to Revoke *In Forma Pauperis* Status
GRANTED**

Joseph C. Handlon, Esquire, Department of Justice, Wilmington, Delaware,
Attorney for the State

Joseph M. Walls, *Pro Se*

JOHNSTON, J.

1. On April 18, 2012, Plaintiff Joseph M. Walls, an inmate at the James T. Vaughn Correctional Center, filed an application to proceed *in forma pauperis*, and a civil complaint against Warden Perry Phelps, Casey Phelps and Stanley Baynard (collectively referred to as “Defendants”), all officers with the Department of Corrections. Walls alleged that the Defendants violated the Racketeer Influenced and Corrupt Organizations Act (“RICO”) by engaging in, *inter alia*, religious and racial discrimination. Walls’ allegations stem from a March 26, 2010 incident. Along with the complaint, Walls petitioned for a writ of mandamus requesting that this Court compel Defendants to comply with mandatory state regulations.

2. On April 20, 2012, this Court entered an Order granting Walls’ application to proceed *in forma pauperis*.

3. On May 8, 2012, Warden Perry Phelps filed a Motion to Revoke Walls’ *In Forma Pauperis* Status, arguing that Walls’ history of filing frivolous actions with the Delaware Courts foreclosed Walls from *in forma pauperis* status pursuant to the “three strikes” provision of 10 *Del. C.* § 8804(f).

4. On June 18, 2012, Walls filed a Response to Warden Perry Phelps' Motion to Revoke. Walls argues that Section 8804(f) is unconstitutional and that he should not be penalized for his prior actions.

5. Section 8804(f) of Title 10 of the Delaware Code provides, in pertinent part, that a prisoner may not “file a complaint or appeal of a judgment arising from a complaint brought *in forma pauperis* if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or an appeal in a federal court or constitutional or statutory court of the State that was dismissed on the grounds that it was frivolous, malicious or failed to state a claim upon which relief may be granted.” Section 8804(f) allows an exception where “the prisoner is under imminent danger of serious physical injury at the time that the complaint is filed.”¹ The burden is on the prisoner to establish *in forma pauperis* status, and this Court may not waive the requirements of Section 8804(f) when determining whether an applicant is qualified.²

¹ 10 *Del. C.* § 8804(f).

² *Shockley v. Danberg*, 2009 WL 402515, at *1 (Del. Super.).

6. Walls has been incarcerated since 1986 and has filed at least 5 civil actions that have been dismissed as frivolous, or for failure to state a claim. In 1988, Walls filed a 91-page complaint against 29 defendants, alleging various torts and Section 1983 claims.³ This Court dismissed the complaint for failure to state a claim, failure to meet the applicable statute of limitations and for lack of jurisdiction.⁴

7. In 1999, Walls filed a complaint in the United States District Court for the District of Delaware and was given leave to proceed *in forma pauperis*. The District Court dismissed the complaint as frivolous.⁵

8. In 2002, Walls filed an action against the Delaware State Police and others, alleging breach of contract and tortious interference. This Court dismissed the action for, *inter alia*, failure to meet the applicable statute of limitations.⁶ The decision was affirmed by the Delaware Supreme Court.⁷

9. In 2004, Walls filed another Section 1983 action and proceeded *in forma pauperis*. This Court dismissed the claim and the Delaware

³ *Walls v. Del. State Police*, 1988 WL 912224 (Del. Super.).

⁴ *Id.*

⁵ *Walls v. Williams*, No. 99 CV 183 (D. Del. 1999).

⁶ *Walls v. Jackson*, 2002 WL 1752283 (Del. Super.).

⁷ *Walls v. Jackson*, 2003 WL 21373878 (Del.).

Supreme Court affirmed on the ground that the complaint was factually and legally frivolous.⁸

10. In 2011, Walls filed another Section 1983 action and proceeded *in forma pauperis*. This Court dismissed the action for failure to state a claim.⁹ The Delaware Supreme Court summarily affirmed the dismissal.¹⁰

11. Based on the foregoing, the Court finds that Walls has brought more than three civil actions which have been dismissed as frivolous or for failure to state a claim. The Court further finds that Walls has failed to establish that he was under imminent danger of serious physical injury at the time that his complaint was filed. The complaint was filed nearly two years after the incident upon which it is based.¹¹

12. Accordingly, pursuant to 10 *Del. C.* § 8804(f), Walls is precluded from proceeding *in forma pauperis* for this case.

⁸ *Walls v. Taylor*, 2004 WL 906550 (Del.).

⁹ *Walls v. Little*, 2011 WL 5288871 (Del. Super.).

¹⁰ *Walls v. Little*, 2012 WL 1415582 (Del.).

¹¹ *See Biggins v. Biden*, 2010 WL 3496838, at *4 (Del. Super.).

THEREFORE, Defendant's Motion to Revoke *In Forma Pauperis*
Status is hereby **GRANTED**.

IT IS SO ORDERED.

/s/ Mary M. Johnston
The Honorable Mary M. Johnston