

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JOSEPH MICHAEL WILSON,)
AIS # 230202)
)
Plaintiff,)
)
v.)
)
KAY IVEY, *et al.*,)
)
Defendants.)

CASE NO. 2:17-CV-381-WKW
[WO]

ORDER

On June 15, 2017, the Magistrate Judge filed a Recommendation. (Doc. # 3.)
On June 26, 2017, Plaintiff filed a *pro se* Motion for Reconsideration (Doc. # 4),
which the court construes as a timely objection to the Recommendation.
Nevertheless, upon an independent and *de novo* review of the record and
consideration of the objections, the Recommendation is due to be ADOPTED.

The Magistrate Judge recommends dismissal under the “three strikes”
provision of 28 U.S.C. § 1915(g) because Plaintiff asks to proceed *in forma pauperis*
and “has, on 3 or more occasions, while incarcerated . . . 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.” Plaintiff protests that the cases cited by the
Magistrate Judge were not dismissed on those grounds. (Doc. # 4, at 1–4.) However,
the record in each case supports the Magistrate Judge’s conclusion. (*See* Doc. # 3

(citing three of Plaintiff's former cases, which all were dismissed under 28 U.S.C. § 1915(e)(2)(B)(i) or (ii) for being "frivolous or malicious" or for "fail[ing] to state a claim on which relief may be granted".) Plaintiff's objection is therefore overruled.

Exceptions to the three strikes rule are permitted under § 1915(g) if "the prisoner is under imminent danger of serious physical injury." Thus, Plaintiff contends that the secondhand smoke he inhales in the prison, which allegedly includes smoke from cigarettes containing a mix of tobacco and other dangerous substances, places him within this exception. (Doc. # 4, at 4.) However, as the Magistrate Judge already pointed out, the court addressed this argument in one of Plaintiff's prior cases. (Doc. # 5, at 2.) That argument is unavailing now as it was then.

Accordingly, it is ORDERED as follows:

1. Plaintiff's objections (Doc. # 4) are OVERRULED;
2. The Magistrate Judge's Recommendation (Doc. # 3) is ADOPTED;
3. Plaintiff's application to proceed *in forma pauperis* (Doc. # 2) is DENIED; and
4. This case is DISMISSED without prejudice for Plaintiff's failure to pay the fees upon initiation of this case pursuant to 28 U.S.C. § 1915(g).

A final judgment will be entered separately.

DONE this 12th day of July, 2017.

/s/ W. Keith Watkins
CHIEF UNITED STATES DISTRICT JUDGE