

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION**

TYRONE ELLIS, ADC # 149250

PLAINTIFF

v.

2:16CV00042-DPM-JJV

PATRICK DRUMMOND, APN,
East Arkansas Regional Unit

DEFENDANT

ORDER

Tyrone Ellis (“Plaintiff”) filed this action *pro se* and pursuant to 42 U.S.C. § 1983 on March 25, 2016. (Doc. No. 2.) He also submitted an Application to Proceed Without Prepayment of Fees and Affidavit (“Application”) (Doc. No. 1) which I granted on March 28, 2016 (Doc. No. 3). Now, Defendant Patrick Drummond has filed a Motion to Vacate Plaintiff’s *In forma Pauperis* Status (“Motion”) (Doc. No. 9) and argues Plaintiff is a “three-striker” within the meaning of 28 U.S.C. § 1915 (g). I have reviewed the evidence submitted in support of the Motion and conclude that it should be granted in part. Plaintiff has had at least three cases dismissed as frivolous or for failure to state a claim upon which relief may be granted.¹ Moreover, the allegations at issue in this suit do not indicate Plaintiff is in imminent danger of serious physical harm insofar as he is complaining about a medical delay which began September 4, 2015 and was resolved on September 19, 2015. (Doc. No. 2 at 4.) Accordingly, the Order (Doc. No. 3) granting him *in forma pauperis* status will be vacated and he will be required to tender the filing fee before proceeding with this action.

I decline, however, to require that Plaintiff pay the United States Marshal’s fee associated with serving Defendant Drummond before this action may proceed. I also decline, as Defendant suggests, to recommend immediate dismissal of this lawsuit and require Plaintiff to tender the filing

¹See *Ellis v. Chandler, et. al.*, 1:10CV01080-RTD; *Ellis v. Chandler, et. al.*, 1:11CV01006-RTD; *Ellis v. McDaniel*, 5:15CV00236-BSM.

fee before it is re-opened. Plaintiff shall have fourteen days to tender the fee. If he fails to do so, I will recommend dismissal at that time.

IT IS, THEREFORE, ORDERED that:

1. Defendant's Motion to Vacate Plaintiff's *In forma Pauperis* Status (Doc. No. 9) is GRANTED in part.

A. The Order granting Plaintiff *in forma pauperis* status (Doc. No. 3) is vacated and Plaintiff's *in forma pauperis* status is revoked.

B. The Motion is denied in all other respects.

2. If Plaintiff wishes to proceed with this action, he must tender the full filing fee of \$400.00 within fourteen days of this Order's entry. Failure to do so will result in a recommendation that this action be dismissed.

DATED this 19th day of April, 2016.



JOE J. VOLPE
UNITED STATES MAGISTRATE JUDGE