

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

JAMES LEE WITHERS

PLAINTIFF

v.

No. 4:12-cv-44-DPM

MIKE BEEBE, Governor; and
LARRY B. NORRIS, Director of
the Corrections Department

DEFENDANTS

ORDER

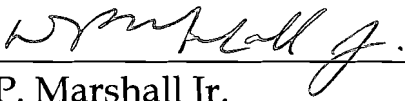
Withers's motion for leave to proceed *in forma pauperis*, Document No. 1, is granted. 28 U.S.C. § 1915(a)(1).

Service is not appropriate. If a court finds at any time that an *in forma pauperis* case is frivolous, malicious, or fails to state a claim, "the court shall dismiss the case[.]" 28 U.S.C. § 1915(e)(2). An action is factually frivolous "if the facts alleged are clearly baseless, a category encompassing allegations that are fanciful, fantastic, and delusional[.]" *Denton v. Hernandez*, 504 U.S. 25, 32-33 (1992) (internal quotations omitted). A court may not dismiss an *in forma pauperis* action simply because the allegations in the complaint are unlikely or improbable. 504 U.S. at 33. Instead, a court may dismiss a case as frivolous only "when the facts alleged rise to the level of the irrational or the wholly incredible[.]" *Ibid*.

Withers's one-paragraph complaint requests "pay for Capital Punishment executions carried out by me in 1960 and the right to leave the State of Arkansas and transportation to my government automobile to leave the State." *Document No. 2, at 1.* He further seeks "retrieval of my name before I assumed the name of James Lee Withers." *Ibid.* The complaint contains no mention of the Defendants and has no factual allegations other than what is implied in Withers's requests.

This lawsuit moves past the unlikely or implausible into the realm of the delusional, "the irrational [and] the wholly incredible[.]" *Denton*, 504 U.S. at 33. Because Withers's *in forma pauperis* case is frivolous and because it fails to state any claim against the Defendants, the Court must dismiss it. 28 U.S.C. § 1915(e)(2)(B)(i) & (ii). Withers's complaint is therefore dismissed without prejudice.

So Ordered.



D.P. Marshall Jr.
United States District Judge



26 January 2011