

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

LESSIE SMITH		*	
	PLAINTIFF	*	
		*	
V.		*	
		*	CASE NO. 4:17CV00543 SWW
		*	
JERICO WAY		*	
	DEFENDANT	*	
		*	

ORDER

Plaintiff Lessie Smith (“Smith”) commenced this action *pro se*, naming “Jericho Way” as the defendant. Along with the complaint, Smith filed an application for leave to proceed *in forma pauperis* [ECF No. 1]. After careful consideration, and for reasons that follow, the Court finds that the application to proceed *in forma pauperis* must be denied and the case dismissed as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

I.

The federal statute governing *in forma pauperis* proceedings provides that a court shall dismiss a case at any time if the court determines that the action is frivolous or malicious or fails to state a claim upon which relief may be granted. *See* 28 U.S.C. § 1915(e)(2). The Eighth Circuit has instructed that the decision of whether a complaint is frivolous or malicious precedes the decision of whether to grant *in forma pauperis* status and whether to order service of process. *See Carney v. Houston*, 33 F.3d 893, 895 (8th Cir. 1994)(quoting *Gentile v. Missouri Dept. Of Corrections*, 986 F.2d 214 (8th Cir.

1993)). “If the complaint is frivolous or malicious, the district court should dismiss it out of hand.” *Id.* A complaint is frivolous where it lacks an arguable basis either in law or fact. *See Neitzke v. Williams*, 490 U.S. 319, 325-27 (1989). A complaint lacks an arguable basis in law if the claim is based on an indisputably meritless legal theory. *Neitzke*, 490 U.S. at 327, 109 S. Ct. at 1832.

II.

Smith lists her address as 3000 Springer Blvd., formerly Confederate Blvd., the site of the Jericho Way Resource Center. Smith states that she is homeless and that “Jericho Way” violated her federal rights by taking her personal mail, a medical identification card sent to her by the Department of Human Services, and refusing to return it to her. In support of her claim, Smith cites 18 U.S.C. § 1708, a federal statute that criminalizes mail theft. There being no federal, civil cause of action for the violation of a criminal statute that prohibits mail tampering, Smith’s claim lacks an arguable basis in law and must be dismissed as frivolous.

III.

IT IS THEREFORE ORDERED that pursuant to the judgment entered together with this order, Plaintiff’s complaint is DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED that Plaintiff’s application to proceed *in forma pauperis* [ECF No. 1] is DENIED AS MOOT.

IT IS SO ORDERED THIS 7TH DAY OF SEPTEMBER, 2017.

/s/Susan Webber Wright
UNITED STATES DISTRICT JUDGE