

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

MICHAEL OTIS ROBERTSON
ADC #106563

PLAINTIFF

v.

Case No. 4:22-cv-00079-KGB

ERIC S. HIGGINS, et al.

DEFENDANT

ORDER

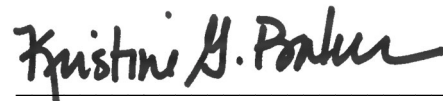
Before the Court are the Proposed Findings and Recommendations (“Recommendation”) submitted by United States Magistrate Judge Jerome T. Kearney and several motions filed by plaintiff Michael Otis Robertson (Dkt. Nos. 2; 4–6; 8–10). Judge Kearney recommends dismissing Mr. Robertson complaint because Mr. Robertson failed to submit an *in forma pauperis* application (“IFP”) or pay the required \$402.00 administrative filing fee as required (*Id.*, at 2). Judge Kearney also notes in his Recommendation that “[i]t would be futile to ask Plaintiff to file an IFP Motion because he is a ‘three striker’ under the Prison Litigation Reform Act (‘PLRA’)” (*Id.*). 28 U.S.C. § 1915(g) *et seq.* Mr. Robertson filed a timely objection on February 14, 2022 (Dkt. No. 3). The same date, Mr. Robertson filed an IFP motion (Dkt. No. 4). Since February 2022, Mr. Robertson has filed an additional IFP motion, two motions to amend his complaint, and two motions for status update (Dkt. Nos. 5–6; 8–10).

After careful consideration of the Recommendation, Mr. Robertson’s objections, and a *de novo* review of the record, the Court concludes that the Recommendation should be, and hereby is, approved and adopted in its entirety as this Court’s findings in all respects (Dkt. No. 2).

The Court writes separately to address this matter and Mr. Robertson’s remaining filings. Judge Kearney concludes that Mr. Robertson is a “three striker” within the meaning of the PLRA (Dkt. No. 2, at 2). Although certain of the cases Judge Kearney cited to determine Mr. Robertson’s

“three-striker” status may be on appeal, this Court notes that even cases on appeal remain “strikes” within the meaning of the PLRA, barring Mr. Robertson from proceeding on his current claim without paying the full filing fee (*Id.*, at 3 n.2). *Coleman v. Tollefson*, 575 U.S. 532, 538 (2015) (holding that a prisoner case on appeal determined to be a “strike” by the district court remains a “strike” while on appeal). Moreover, in his filings made subsequent to Judge Kearney’s Recommendation, Mr. Robertson has not indicated to this Court that he faces the threat of imminent danger necessary to meet the exception to the PLRA’s general rule barring an inmate plaintiff from proceeding IFP when that plaintiff has previously filed three lawsuits determined to be frivolous (Dkt. Nos. 4–6; 8). *Martin v. Shelton*, 319 F.3d 1048, 1050 (8th Cir. 2003). For these reasons, the Court adopts Judge Kearney’s Recommendation and dismisses without prejudice Mr. Robertson’s complaint (Dkt. Nos. 1; 2). The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an *in forma pauperis* appeal taken from the Order and Judgment dismissing this action is considered frivolous and not in good faith. The Court also denies as moot Mr. Robertson’s two IFP motions and his two motions to amend his complaint (Dkt. Nos. 4–6; 8). The Court, through this Order, grants Mr. Robertson’s requests for a status update and directs the Clerk of Court to send to Mr. Robertson a copy of this Order and the docket sheet (Dkt. Nos. 9–10).

It is ordered this 17th day of January, 2023.



Kristine G. Baker
United States District Judge