

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

FEB 9 0 2009

Civil Action No. **'09 - CV - 00350** *Bnb*

GREGORY C. LANGHAM
CLERK

(The above civil action number must appear on all future papers sent to the Court in this action. Failure to include this number may result in a delay in the consideration of your claims.)

ANDRE J. TWITTY,

Plaintiff,

v.

ZITA L. WEINSHIENK - USDC Judge (Den),
BOYD N. BOLAND - U.S. Magistrate Judge (Den),
GREGORY C. LANGHAM - (USDC) Clerk (Den),
NFN AUDRA - Clerk (USDC) (Den), Federal Employee,
CHIEF JUDGE TACHA - U.S. Circuit Judge (10th Circuit) (Den), Federal Employee,
LEWIS T. BABOCK, U.S. Circuit Judge (10th) Den, Federal Employee,
PAUL J. KELLY - U.S. Circuit Judge (10th) (Den), Federal Employee,
NFN MCCONNELL - U.S. Circuit Judge (10th) (Den), Federal Employee,
ELISABETH A. SHUMAKER - Clerk 10th Circuit, 1823 Stout St., Denver, CO 80257,
CHRISTINE VAN CONEY - Staff Attorney, 10th Circuit, 1823 Stout St., Denver,
CO 80257,
DOUGLAS E. CRESSLER - Chief Deputy Clerk, 10th Circuit, 1823 Stout St., Denver,
CO 80257,
MIKE MUKASEY - Former U.S. Attorney Gen., U.S.D.O.J., 10th, Constitution Ave.
N.W., Wash. D.C. 20530,
ALBERTO GONZALEZ - Former U.S. Attorney Gen. U.S.D.O.J., 10th, Constitution Ave.
N.W., Wash D.C. 20530,
HARLEY G. LAPPIN - B.O.P. Dir., 320 First N.W. Wash D.C. 20534,
HARRELL WATTS - B.O.P. Clerk, 320 First N.W., Wash. D.C. 20534,
MIKE NALLEY - B.O.P. Regional Dir., 400 State St., K.C. KS 66101
NFN FIELDS - BOP Clerk, 400 State St., K.C. KS 66101,
RONNIE WILEY - Warden FLM, POB 8500, Florence, CO 81226-8500,
NFN FOX - Assoc. Warden FLM, POB 8500, Florence, CO 81226-8500,
UNKNOWN EXECUTIVE ASST. FLM, POB 8500, Florence, CO 81226-8500,
UNKNOWN CAPTAIN FLM, POB 8500, Florence, CO 81226-8500,
M. CHURCH, Captain FLM, POB 8500, Florence, CO 81226-8500,
D.J. KRIST - SIA FLM, POB 8500, Florence, CO 81226-8500,
ALL UNKNOWN SIS INVESTIGATORS, FLM, POB 8500, Florence, CO 81226-8500,
UNKNOWN MEDICAL FLM, POB 8500, Florence, CO 81226-8500,
DAVID M. LETA - Asst. U.S. Attorney, 1800 (Ste) 75 Spring St. S.W., Atlanta,
GA 30301,

TROY EID, U.S. Attorney, 1225 17th St., Ste. 700, Denver, CO 80202, all in their individual capacities,

Defendants.

ORDER DIRECTING CLERK TO COMMENCE CIVIL ACTION AND
DIRECTING PLAINTIFF TO SHOW CAUSE

Plaintiff, Andre J. Twitty, has submitted a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 and a Prisoner's Complaint. He also has filed motions titled "Motion to Supplement the Attached Civil Complaint Form[,] Brief in Support" and "Motion to Proceed In Forma Pauperis, Brief in Support." The Court has reviewed the documents pursuant to D.C.COLO.LCivR 8.2. The clerk of the Court will be directed to commence a civil action. Any papers that Plaintiff files in response to this order must include the civil action number on this order.

Mr. Twitty seeks leave to proceed without prepayment of fees or security therefor pursuant to 28 U.S.C. § 1915 (2006). In relevant part, this statute provides:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, 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 upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). For the purposes of this analysis, the Court may consider actions or appeals dismissed prior to the enactment of 28 U.S.C. § 1915(g). **Green v. Nottingham**, 90 F.3d 415, 420 (10th Cir. 1996).

Mr. Twitty has initiated more than three actions or appeals in a court of the United States while he was incarcerated or detained in any facility that were dismissed as frivolous, malicious, or for failure to state a claim. Mr. Twitty filed at least two prior civil actions in the United States District Court for the Northern District of Georgia, Atlanta Division, that were dismissed on grounds that form a basis for invoking 28 U.S.C. § 1915(g). **See Twitty v. Deane**, No. 00-cv-01064-TWT (N.D. Ga. July 18, 2000) (dismissed pursuant to 28 U.S.C. § 1915A for failure to state a claim); **Twitty v. Larson**, No. 98-cv-03188 (N.D. Ga. Mar. 2, 1999) (dismissed as frivolous). The Eleventh Circuit dismissed as frivolous Mr. Twitty's appeal from the Court's ruling in **Twitty v. Larson**, No. 98-cv-03188. **See** Docket No. 00-14092 (11th Cir. 2001).

Mr. Twitty also previously filed at least one civil action in the United States District Court for the District of South Carolina that was dismissed for failure to state a claim for which relief may be granted. **See Twitty v. Hawk-Sawyer**, No. 00-cv-03192 (D.S.C. Mar. 26, 2002). In addition, the United States District Court for the District of Kansas twice has denied Mr. Twitty permission to proceed *in forma pauperis* because of the "three strikes" provision of 28 U.S.C. § 1915(g). **See Twitty v. Ashcroft**, No. 02-cv-03270-GTV (D. Kan. Nov. 18, 2002); **see also Twitty v. Ashcroft**, No. 01-cv-03484-GTV (D. Kan. Jan. 11, 2002). This Court previously has revoked Mr. Twitty's *in forma pauperis* status pursuant to the "three strikes" provision of § 1915(g). **See Twitty v. Gonzalez**, No. 06-cv-00667-ZLW (D. Colo. June 26, 2006), **appeal dismissed**, No. 06-1380 (10th Cir. Jan. 3, 2007). In the instant action, Mr. Twitty clearly disagrees with rulings by this Court and by the United States Court of Appeals for the Tenth Circuit.

However, he fails to assert factual allegations that he is under imminent danger of serious physical injury. Therefore, Mr. Twitty will be denied leave to proceed pursuant to 28 U.S.C. § 1915(g). Therefore, Mr. Twitty will be ordered to show cause why he should not be denied leave to proceed pursuant to 28 U.S.C. § 1915(g). Accordingly, it is

ORDERED that Mr. Twitty show cause in writing **within thirty (30) days from the date of this order** why he should not be denied leave to proceed pursuant to 28 U.S.C. § 1915(g) because: (1) he has, on three or more prior occasions, while incarcerated or detained in any facility, 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 upon which relief may be granted; and (2) he fails to establish that he is under imminent danger of serious physical injury. It is

FURTHER ORDERED that the response shall be titled, "Response to Order to Show Cause," and shall be filed with the Clerk of the Court, United States District Court for the District of Colorado, Alfred A. Arraj United States Courthouse, 901 Nineteenth Street, A105, Denver, Colorado 80294. It is

FURTHER ORDERED that, if Mr. Twitty fails to show cause **within thirty (30) days from the date of this order**, the complaint and the action will be dismissed

without further notice. The dismissal shall be without prejudice.

DATED at Denver, Colorado, this 19th day of February, 2009.

BY THE COURT:

Boyd N. Boland
BOYD N. BOLAND
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

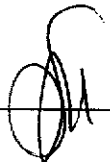
CERTIFICATE OF MAILING

Civil Action No. **'09 - CV - 00350**

Andre J. Twitty
Reg. No. 18558-018
ADX – Florence
PO Box 8500
Florence, CO 81226-8500

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 2/26/09

GREGORY C. LANGHAM, CLERK

By:  _____
Deputy Clerk