

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Chief Judge Wiley Y. Daniel

Civil Action No. 09-cv-00350-WYD

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 OF DISMISSAL

Plaintiff Andre J. Twitty is a prisoner in the custody of the United States Bureau of Prisons who currently is incarcerated at the United States Penitentiary, Administrative Maximum, in Florence, Colorado. Mr. Twitty submitted to the Court *pro se* a Prisoner Complaint with no claims that refers to a separate motion titled "Motion to Supplement the Attached Civil Complaint Form[,] Brief in Support," containing his claims. The motion to supplement will be granted. He also submitted to the Court a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915, and a motion titled "Motion to Proceed In Forma Pauperis, Brief in Support."

In an Order filed on February 20, 2009, Magistrate Judge Boyd N. Boland directed the Clerk of the Court to commence a civil action and, for the reasons stated below, ordered Plaintiff to show cause within thirty days. Plaintiff seeks leave to proceed without prepayment of fees or security therefor pursuant to 28 U.S.C. § 1915.

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

Plaintiff 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. Plaintiff 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 Plaintiff's appeal from the North District of Georgia's ruling in *Twitty v. Larson*, No. 98-cv-03188. See Docket No. 00-14092 (11th Cir. 2001).

Plaintiff 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 Plaintiff 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 Plaintiff'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, Plaintiff clearly disagrees with rulings by this Court and by the United States Court of Appeals for the Tenth Circuit. He alleges that Defendants have conspired with each other and been engaged in a pattern of racketeering activity. However, he fails to assert factual allegations that he is under imminent danger of serious physical injury. Therefore, Plaintiff will be denied leave to proceed pursuant to 28 U.S.C. § 1915(g). Accordingly, it is

ORDERED that the motion titled “Motion to Supplement the Attached Civil Complaint Form[,] Brief in Support” that Plaintiff Andre J. Twitty submitted to and filed with the court on February 20, 2009, is **GRANTED**. It is

FURTHER ORDERED that Plaintiff is **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 complaint and the action are **DISMISSED**
WITHOUT PREJUDICE.

Dated: April 16, 2009

BY THE COURT:

s/ Wiley Y. Daniel _____
Wiley Y. Daniel
Chief United States District Judge