

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01411-BNB

ANDRE J. TWITTY,

Plaintiff,

v.

TROY EID, Our Current U.S. Attorney,

Defendant.

FILED  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

JUL 31 2009

GREGORY C. LANGHAM  
CLERK

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ORDER OF DISMISSAL

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Plaintiff, Andre J. Twitty, submitted *pro se* an amended Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 and a Prisoner Complaint which refers to a previously filed motion titled "Motion for Writ of Mandamus, To Compel the Respondent To Convene a Federal Grand Jury To Investigate the 'Flagrant Abuse of Distrestion [sic]' of the U.S. District Court Tenth Circuit Court of Appeals Judges, Clerks, Staff Attorney, Criminal Violations of Federal Law Brief in Support."

In an order filed on July 7, 2009, Magistrate Judge Boyd N. Boland directed the clerk of the court to commence a civil action and, for the reasons stated below, ordered Mr. Twitty to show cause within thirty days. On July 20, 2009, Mr. Twitty filed his response to the order to show cause.

The Court must construe liberally Mr. Twitty's filings because he is representing himself. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935

F.2d 1106, 1110 (10th Cir. 1991). However, the Court should not be the *pro se* litigant's advocate. *See Hall*, 935 F.2d at 1110.

Mr. Twitty 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, 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 (Northern District of Georgia), 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

North District of Georgia'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).

Accordingly, it is

ORDERED that Plaintiff, Andre J. Twitty, 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. It is

FURTHER ORDERED that the motion titled "Motion for Writ of Mandamus, To Compel the Respondent To Convene a Federal Grand Jury To Investigate the 'Flagrant Abuse of Distrestion [sic]' of the U.S. District Court Tenth Circuit Court of Appeals Judges, Clerks, Staff Attorney, Criminal Violations of Federal Law Brief in Support" is denied as moot.

DATED at Denver, Colorado, this 31 day of July, 2009.

BY THE COURT:



ZITA L. WEINSHIENK, Senior Judge  
United States District Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

**CERTIFICATE OF MAILING**

Civil Action No. 09-cv-01411-BNB

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 AND JUDGMENT** to the  
above-named individuals on 7/31/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk