

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

ALEXANDER LEO BROWN,

Plaintiff,

v.

Case No: 2:14-cv-599-FtM-29DNF

FNU SAINTAVIL, individual  
capacity,

Defendant.

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**ORDER OF DISMISSAL**

Plaintiff, an inmate serving a sentence in the custody of Suwannee Correctional Institution in Live Oak, Florida initiated this case by filing a *pro se* civil rights complaint and a motion for leave to proceed as a pauper (Doc. 1; Doc. 2). After reviewing the complaint, the Court ordered Plaintiff to show cause why this case should not be dismissed for abuse of the judicial process because he failed to disclose all of his prior federal cases, as required on the complaint form (Doc. 6). Plaintiff filed a response to the order to show cause in which he argues that he provided the cases he felt were relevant to the instant litigation and asks for leave to file an amended complaint to list his complete litigation history (Doc. 9).

For the reasons set forth in this Order, Plaintiff will not be granted leave to file an amended complaint. Plaintiff's complaint will be dismissed without prejudice to filing a new civil

action in which Plaintiff provides the Court with his complete litigation history.

**I. Background**

On October 13, 2014, Plaintiff executed the instant civil rights complaint form under penalty of perjury (Doc. 1 at 10). Section III of that form requires prisoners to disclose information regarding previous lawsuits initiated by them. Specifically, Section III(C) required Plaintiff to disclose whether he had "initiated other actions in federal court dealing with the same or similar facts/issues involved in this action or otherwise relating to your imprisonment or conditions thereof?" (Doc. 1 at 2). Plaintiff listed only case number 2:13-cv-824-FtM-38DNF and stated that the case had been voluntarily dismissed (Doc. 1 at 2). In Section III(D) of the complaint, Plaintiff was asked whether he had "initiated lawsuits or appeals from lawsuits in federal court that have been dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted." Plaintiff wrote "n/a" in the space provided to describe such dismissals.

Id.

The Court, however, identified the following cases brought by the Plaintiff that he failed to identify: (1) Case No. 3:14-cv-581-J-32JRK; (2) Case No. 2:14-cv-427-FtM-29DNF; (3) Case No. 2:14-cv-179-FtM-29CM; and (4) Case No. 2:13-cv-94-FtM-29DNF. In addition, Plaintiff filed Case No. 3:14-cv-1258-TJC-JRK in

Jacksonville the day before he filed the instant complaint. Case numbers 2:14-cv-427-FtM-29DNF and 2:14-cv-179-FtM-29CM involved the same incident at issue in Plaintiff's instant complaint. Case No. 2:13-cv-94-FtM-29DNF was dismissed by this Court on February 19, 2014 for failure to state a claim upon which relief may be granted and for failure to exhaust his administrative remedies (Case No. 2:13-cv-94-FtM-29DNF at Doc. 7).

Plaintiff was ordered to show cause why he should not be subject to sanctions, including, but not limited to, the dismissal of the instant case without prejudice due to his failure to honestly apprise the Court of his litigation history (Doc. 6).

## **II. Discussion**

Providing false information to the court is, in-and-of itself, a valid ground for dismissing a complaint. See Redmon v. Lake County Sheriff's Office, 414 F. App'x 221, 226 (11th Cir. 2011)(prisoner's failure to disclose previous lawsuit constituted abuse of judicial process warranting sanction of dismissal of his pro se § 1983 action);<sup>1</sup> see also Hood v. Tompkins, 197 F. App'x 818, 819 (11th Cir. 2006) (upholding dismissal based on abuse of judicial process for failing to disclose prior litigation and holding that "the district court was correct to conclude that to

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<sup>1</sup> **Error! Main Document Only.** Pursuant to 11th Cir. Rule 36-2, unpublished opinions are not binding precedent but may be cited as persuasive authority.

allow [plaintiff] to then acknowledge what he should have disclosed earlier would serve to overlook his abuse of the judicial process."); Shelton v. Rohrs, 406 F. App'x 340, 341 (11th Cir. 2010) (upholding district court's dismissal noting that "[e]ven if [Plaintiff] did not have access to his materials, he would have known that he filed multiple previous lawsuits."); Young v. Secretary Fla. for Dept. of Corr., 380 F. App'x 939 (11th Cir. 2010) (same).

In Redmon, the Eleventh Circuit affirmed the district court's dismissal of a complaint based upon the plaintiff's misrepresentation of his litigation history, noting abuse of the judicial process. 414 F. App'x at 225. The court stated that under 28 U.S.C. § 1915, "[a] finding that the plaintiff engaged in bad faith litigiousness or manipulative tactics warrants dismissal." Id. (citing Attwood v. Singletary, 105 F.3d 610, 613 (11th Cir. 1997)). The Eleventh Circuit explained that a district court may impose sanctions pursuant to Rule 11(c) of the Federal Rules of Civil Procedure if a party knowingly files a pleading that contains false contentions, and although *pro se* pleadings are held to less stringent standards, "a plaintiff's *pro se* status will not excuse mistakes regarding procedural rules." Redmon, 414 F. App'x at 226 (citing McNeil v. United States, 508 U.S. 106, 113 (1993)). Finding no abuse of discretion, the Eleventh Circuit noted that the plaintiff failed to disclose a prior lawsuit, but

had been afforded an opportunity to show cause, just as in the present case, as to why his complaint should not be dismissed. The Eleventh Circuit affirmed the district court's decision in "concluding that Plaintiff's explanation for his failure to disclose the [lawsuit] - that he misunderstood the form - did not excuse the misrepresentation and that dismissal without prejudice was a proper sanction." Id. at 226.

In his response to the Court's order to show cause (Doc. 9), Plaintiff asserts that he was "well aware" that he had filed numerous other complaints in federal court but he did not have the case numbers available and "did not want to be sanctioned for providing false information in which he signed under penalty of perjury." (Doc. 9 at 2). Plaintiff further argues that he could not have abused the judicial system because "abuse would be not providing at all any prior litigation history" and he provided the litigation that he felt was relevant - the case that he voluntarily dismissed (Doc. 9 at 3). Other than feeling that it was not relevant, Plaintiff does not address why he failed to reveal Case No. 2:13-cv-179-FtM-29DNF which was dismissed for failure to state a claim upon which relief could be granted.

The inquiry concerning a prisoner's prior lawsuits is not a matter of idle curiosity, nor is it an effort to raise meaningless obstacles to a prisoner's access to the courts. Rather, the existence of prior litigation initiated by a prisoner is required

in order for the Court to apply 28 U.S.C. § 1915(g) (the "three strikes rule" applicable to prisoners proceeding *in forma pauperis*). Additionally, it has been the Court's experience that a significant number of prisoner filings raise claims or issues that have already been decided adversely to the prisoner in prior litigation. Indeed, on two occasions, Plaintiff has had complaints dismissed by this Court because the allegations raised therein were the same as those raised in an action pending before the Court. See Case Nos. 2:14-cv-427-FtM-29DNF and 2:14-cv-179-FtM-29CM. Identification of prior litigation frequently enables the Court to dispose of successive cases without further expenditure of finite judicial resources.

Plaintiff's assertions that he was "well aware" of the prior litigation but believed that not revealing such to the Court would allow him to avoid sanctions for not recalling the exact case numbers of his prior cases is not credible. The complaint form clearly instructs a plaintiff to describe each lawsuit. Plaintiff does explain how providing false information to the Court (through omission) is less worthy of sanction than providing honest information to the Court with a notation that he could not remember the exact case numbers of his prior litigation. Any hindrance to honestly filling out the complaint form described by Petitioner does not absolve him of the requirement of disclosing, at a

minimum, all of the information known to him. Young, 380 F. App'x at 941.

Finally, Plaintiff has not provided the Court with any reason for claiming that none of his prior cases had been dismissed for failure to state a claim upon which relief could be granted when in fact, Case No. 2:13-cv-179-FtM-29DNF was dismissed for failure to state a claim upon which relief could be granted only seven months before he filed the instant suit. The Court's eight-page order of dismissal in that case provided detailed and explicit reasons for the dismissal. Id.

Plaintiff has failed to truthfully disclose his prior cases as required by the plain language instructions of the civil rights complaint form and has failed to come forward with any persuasive reason to excuse his lack of candor. The Court finds that Plaintiff's failure to fully disclose his previous lawsuits, under penalty of perjury, constitutes an abuse of the judicial process. See Rivera v. Allin, 144 F.3d 719, 731 (11th Cir. 1998). An appropriate sanction for such abuse of the judicial process is the dismissal of the complaint. Id.

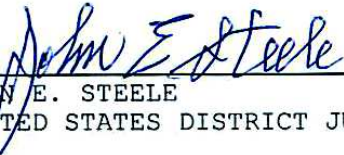
ACCORDINGLY, it is hereby

**ORDERED:**

1. This case is **DISMISSED without prejudice**. Such dismissal counts as a "strike" for the purposes of 28 U.S.C. § 1915(g).

2. The **Clerk of Court** is directed to enter judgment dismissing this case without prejudice, terminate any pending motions, and close the file.

**DONE** and **ORDERED** in Fort Myers, Florida on this 5th day of November, 2014.

  
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JOHN E. STEELE  
UNITED STATES DISTRICT JUDGE

SA: Or1P-4  
Copies: All Parties of Record