

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

DAVID TERRENCE STEPHENS,

Plaintiff,

v.

Case No.: 2:19-cv-216-FtM-38NPM

AMANDA REGINA JACOBSON,

Defendant.

OPINION AND ORDER¹

Before the Court is Plaintiff David Terrance Stephens' Motion to Proceed In Forma Pauperis ([Doc. 9](#)) filed on September 6, 2019. Plaintiff an inmate in Florida's Department of Corrections initiated this action by filing a Motion to File a Complaint Construed as a Civil Rights Complaint under [42 U.S.C. § 1983](#). ([Doc. 1](#)). Then plaintiff filed a Motion to Amend/ Correct Complaint ([Doc. 13](#)) on October 10, 2019. The allegations in Plaintiff's Complaint are difficult to decipher. The Amended Complaint consists of 209 pages of exhibits, docket sheets from state court proceedings, police reports, Florida Statutes, news articles, and rambling allegations against numerous individuals. Upon review of the pleading, the Court concludes that Plaintiff is attempting to state a claim under [42 U.S.C. § 1983](#) for malicious prosecution. See [Fugate v. Dep't of Corr.](#), [301 F.3d 1287, 1288 \(11th Cir. 2002\)](#) (recognizing that a district court may look beyond the title of a document in order to properly analyze its substance).

¹ Disclaimer: Documents hyperlinked to CM/ECF are subject to PACER fees. By using hyperlinks, the Court does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide, nor does it have any agreements with them. The Court is also not responsible for a hyperlink's availability and functionality, and a failed hyperlink does not affect this Order.

The Prison Litigation Reform Act, which governs this action, contains the following subsection:

(g) 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\(g\)](#). “After the third meritless suit, the prisoner must pay the full filing fee at the time he initiates suit.” [Smith v. Fla. Dep’t of Corr., Case No. 08-14236, 2010 WL 774305 *3 \(11th Cir. Mar. 9, 2010\)](#) (emphasis added)(quoting [Dupree v. Palmer, 284 F.3d 1234, 1236 \(11th Cir. 2002\)](#)).

The Court takes judicial notice of these cases Plaintiff has filed in this Court dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted: Case Nos. (1) 6:01-cv-1512-Orl-31KRS M.D. Fla. (failure to state a claim), (2) 6:04-cv-695-Orl-18KRS M.D. Fla. (frivolous), (3) 8:06-cv-319-T-27MAP M.D. Fla. (failure to state a claim), (4) 8:09-cv-194-T-27TGW M.D. Fla. (failure to state a claim), (6) 3:18-cv-813-BJD-JBT (failure to date a claim), (7) 3:18-cv-1187-MMH-JBT (failure to state a claim). Thus, Plaintiff qualifies as a “three-striker” under § 1915(g). See [Stephens v. Edwards, No. 3:18-CV-1272-J-39PDB, 2018 WL 5766323, at *1 \(M.D. Fla. Nov. 2, 2018\)](#), appeal dismissed sub nom. [Stephens v. New River CI Warden, No. 18-14825-D, 2018 WL 7360644 \(11th Cir. 2018\)](#) (finding that David Terrance Stephens has been designated as a three-strikes litigant under 28 U.S.C. § 1915(g)).

Plaintiff did not pay a filing fee when he filed this action but applied to proceed in forma pauperis. Given Plaintiff's three-strike status and because the Court concludes

that Plaintiff is not under imminent danger of serious physical injury, this action will be dismissed without prejudice. Plaintiff may initiate a new civil rights action by filing a new civil rights complaint form and paying the full \$400.00 filing fee at the time of filing. This dismissal is without prejudice and does not excuse Plaintiff from any statute of limitation.

Accordingly, it is now

ORDERED:

1. Plaintiff David Terrance Stephens Motion to Proceed In Forma Pauperis ([Doc. 9](#)) is **DENIED**.
2. Plaintiff's action is **DISMISSED without prejudice** under § 1915(g).
3. The Clerk of Court will enter judgment accordingly, terminate any pending motions and deadlines, and close the file.

DONE and **ORDERED** in Fort Myers, Florida this 19th day of November 2019.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

SA: FTMP-2
Copies: All Parties of Record