

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

RANDALL LAMONT ROLLE,

Plaintiff,

v.

CASE NO. 4:08cv453-RH/WCS

NICOLE RAYSOR, et al.,

Defendants.

ORDER OF DISMISSAL

This case is before the court on the magistrate judge's report and recommendation (document 12) and the objections (document 13). I have reviewed *de novo* the issues raised by the objections.

The plaintiff seeks leave to proceed *in forma pauperis*. He has made clear he will not pay the filing fee. The report and recommendation concludes that the case should be dismissed because the plaintiff has three or more "strikes"—that is, actions dismissed as frivolous or on other grounds specified in the Prison Litigation Reform Act—and thus cannot properly proceed *in forma pauperis*.

In his objections, the plaintiff notes, correctly, that in identifying three

strikes, the report and recommendation lists Case No. 4:06cv373 twice. The mistake is understandable; the plaintiff has had many cases dismissed, and keeping them all straight is not easy.

The plaintiff has more than three strikes. Cases in this district dismissed on grounds constituting a strike include Cases No. 4:06cv373 and 4:06cv406, which were listed in the report and recommendation. Another case in this district dismissed on grounds constituting a strike is Case No. 4:07cv167. In addition, Cases No. 4:07cv262 and 4:07cv317 were dismissed because the defendant already had three or more strikes and did not pay the filing fee. In the Middle District of Florida, Case No. 3:07cv45 was dismissed as frivolous a mere two days after the case was filed. In addition, the plaintiff has voluntarily dismissed other cases—sometimes on the eve of the court’s likely dismissal. The voluntarily dismissed cases include this district’s Cases No. 4:05cv332, 4:05cv333, 4:05cv479, and 4:06cv408. A voluntary dismissal is an adjudication on the merits for any claim that was the basis of, or was included in, an action the plaintiff previously dismissed, but there is a split of authority on whether a voluntary dismissal counts as a strike. Because the plaintiff has more than three strikes even without counting his voluntary dismissals, I need not address the issue.

In short, the plaintiff is precisely the kind of abusive filer that Congress

sought to address with the three-strikes provision.

For these reasons,

IT IS ORDERED:

The report and recommendation is ACCEPTED. The clerk must enter judgment stating, “This case is dismissed without prejudice based on the plaintiff’s failure to pay the filing fee and ineligibility to proceed in forma pauperis under 28 U.S.C. § 1915(g).” The clerk must close the file.

SO ORDERED on December 9, 2008.

s/Robert L. Hinkle
Chief United States District Judge