

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

RAYMOND JOHNSON,

Plaintiff,

v.

4:09cv367-WS

CAPTAIN STEVENS, et al.,

Defendants.

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ORDER ADOPTING, IN PART, THE MAGISTRATE JUDGE'S  
REPORT AND RECOMMENDATION

Before the court is the magistrate judge's report and recommendation docketed November 10, 2009. See Doc. 7. The magistrate judge recommends that the plaintiff's complaint and this case be dismissed pursuant to 28 U.S.C. § 1915(g). The plaintiff has filed objections (doc. 10) to the magistrate judge's report and recommendation, explaining his failure to fully disclose his prior litigation history.

Section 1915(g) provides as follows:

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). The record in this case clearly establishes that the plaintiff has previously filed in federal court, on more than three occasions, actions that were subject to the three strikes rule of section 1915. Accordingly, the plaintiff is not entitled to *in forma pauperis* status under section 1915, and he is not entitled to proceed with this case without prepayment of the full filing fee. To the extent the magistrate judge recommends that the plaintiff be denied *in forma pauperis* status based on the three strikes rule articulated in section 1915(g), the magistrate judge's report and recommendation will be adopted. The court does not agree that the case should be dismissed as malicious for failure to fully disclose all prior cases. To the extent the magistrate judge recommends dismissal on that basis, the magistrate judge's report and recommendation is rejected.

Accordingly, it is ORDERED:

1. The magistrate judge's report and recommendation (doc. 7) is hereby ADOPTED to the extent it addresses the plaintiff's status under section 1915(g).

2. The plaintiff's request to proceed *in forma pauperis* is DENIED. The magistrate judge's order (doc. 5) granting the plaintiff's motion for leave to proceed *in forma pauperis* is hereby VACATED AND SET ASIDE. The plaintiff may not proceed with this case without prepayment of the full filing fee.

3. The clerk shall remand the case to the magistrate judge for further proceedings.

DONE AND ORDERED this 30th day of November, 2009.

s/ William Stafford \_\_\_\_\_  
WILLIAM STAFFORD  
SENIOR UNITED STATES DISTRICT JUDGE