

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

D'MARKO PHIPPS,)	
#69596,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 16-cv-00857-JPG
)	
SGT. COLLMAN)	
and JOHN LAKIN,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

GILBERT, District Judge:

On July 28, 2016, Plaintiff D'Marko Phipps filed a Complaint (Doc. 1) pursuant to 42 U.S.C. § 1983 against Sgt. Collman and Sheriff John Lakin for failing to protect him from an attack by fellow detainees. (Doc. 1). The Complaint did not survive threshold review under 28 U.S.C. § 1915A. After the Court dismissed the Complaint (Doc. 1) for failure to state a claim upon which relief could be granted (Doc. 6), Plaintiff filed a First Amended Complaint in which he brought similar claims under 42 U.S.C. § 1983. (Doc. 7). The First Amended Complaint was dismissed on February 28, 2017, again for failure to state a claim upon which relief may be granted. (Doc. 8). The dismissal was without prejudice to Plaintiff filing a Second Amended Complaint on or before March 29, 2017. *Id.* That deadline has now passed. Plaintiff has not filed a Second Amended Complaint. He also has failed to request an extension of the deadline for doing so.

As a result, this case is **DISMISSED with prejudice** for failure to comply with an order of this Court and failure to prosecute. FED. R. CIV. P. 41(b); *see generally Ladien v. Astrachan*, 128 F.3d 1051 (7th Cir. 1997); *Johnson v. Kamminga*, 34 F.3d 466 (7th Cir. 1994). Further,

because the First Amended Complaint failed to state a claim upon which relief may be granted, this dismissal shall count as one of Plaintiff's three allotted "strikes" within the meaning of 28 U.S.C. § 1915(g).

Plaintiff's obligation to pay the filing fee for this action was incurred at the time the action was filed, thus the filing fee of \$350.00 remains due and payable. *See* 28 U.S.C. § 1915(b)(1); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998).

If Plaintiff wishes to appeal this Order, he may file a notice of appeal with this Court within thirty days of the entry of judgment. FED. R. APP. 4(A)(4). If Plaintiff does choose to appeal, he will be liable for the \$505.00 appellate filing fee irrespective of the outcome of the appeal. *See* FED. R. APP. 3(e); 28 U.S.C. § 1915(e)(2); *Ammons v. Gerlinger*, 547 F.3d 724, 725-26 (7th Cir. 2008); *Sloan v. Lesza*, 181 F.3d 857, 858-59 (7th Cir. 1999); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998). Moreover, if the appeal is found to be nonmeritorious, Plaintiff may also incur another "strike." A proper and timely motion filed pursuant to Federal Rule of Civil Procedure 59(e) may toll the 30-day appeal deadline. FED. R. APP. P. 4(a)(4). A Rule 59(e) motion must be filed no more than twenty-eight (28) days after the entry of the judgment, and this 28-day deadline cannot be extended.

The Clerk's Office is **DIRECTED** to close this case and enter judgment accordingly.

IT IS SO ORDERED.

DATED: April 5, 2017

s/ J. PHIL GILBERT
J. PHIL GILBERT
United States District Judge