

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

JEREMY K. SMITH,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 17-cv-006-JPG
)	
JEFF BROWN,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

GILBERT, District Judge:

On January 6, 2017, Plaintiff Jeremy Smith filed a Complaint (Doc. 1), along with 7 other detainees at Bond County Jail, pursuant to 42 U.S.C. § 1983. The other plaintiffs to this action have since been dismissed. (Doc. 17). The Complaint did not survive threshold review under 28 U.S.C. § 1915A and was dismissed for failure to state a claim upon which relief may be granted. (Doc. 17, p. 11). The dismissal was without prejudice to Plaintiff filing a First Amended Complaint on or before April 14, 2017. *Id.* That deadline has now passed. Plaintiff has not filed a First 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 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 \$350.00¹ remains due and payable. *See* 28 U.S.C. § 1915(b)(1); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998).

Plaintiff's Motion for Leave to Proceed *In Forma Pauperis* (Doc. 2) will be addressed in a separate Order of this Court.

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. Jockish*, 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 21, 2017

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

¹ Pursuant to 28 U.S.C. § 1914, effective May 1, 2013, an additional \$50.00 administrative fee is also to be assessed in all civil actions, *unless* pauper status has been granted.