

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

**JOHNNIE BANKSTON,
#R-16224,**

Plaintiff,

vs.

Case No. 17-cv-00070-DRH

**MICHEAL WILLIAMS,
JEFFREY DENNISON,
KENNETH HAMILTON,
ANGELA,
TIMOTHY QUIGLEY,
O. TALMAGE, and
C/O DURHAM,**

Defendants.

MEMORANDUM AND ORDER

HERNDON, District Judge:

On January 24, 2017, Plaintiff Johnnie Bankston filed a Motion for Temporary Restraining Order (“TRO Motion”) (Doc. 1) and a Motion for Leave to Proceed *in forma pauperis* (“IFP Motion”) (Doc. 2) in this Court. He did not file a Complaint. The Court immediately considered the TRO Motion and denied it on January 26, 2017. (Doc. 4).

In the same Order, the Court denied Plaintiff’s IFP Motion. *Id.* The Court noted that Plaintiff previously “struck out” by filing at least three prior actions that were dismissed as frivolous, malicious, or for failure to state a claim. (Doc. 4, pp. 4-7). He also demonstrated no imminent danger of serious physical injury. *Id.* He was therefore ordered to pay the full filing fee of \$400.00 and file a Complaint by February 23, 2017, if he wished to proceed. (Doc. 4). The deadline was

extended to March 23, 2017, in response to Plaintiff's request for an extension on February 17, 2017. (Docs. 5-6). Twice, the Court warned Plaintiff that failure to pay the fee and file a Complaint by the deadline would result in dismissal of the action for failure to comply with a court order and for failure to prosecute his claims. (Docs. 4, 6) (citing FED. R. CIV. P. 41(b); *Ladien v. Astrachan*, 128 F.3d 1051 (7th Cir. 1997); *Johnson v. Kamminga*, 34 F.3d 466 (7th Cir. 1994)).

The extended deadline has now passed. Plaintiff has not paid the filing fee or filed a Complaint. He has also failed to request another extension of the deadline for doing so. Plaintiff is in clear violation of the Court's Orders. (Docs. 4, 6). The Court will not allow this matter to linger indefinitely.

IT IS HEREBY ORDERED that this action is **DISMISSED** without prejudice based on Plaintiff's failure to comply with two Orders of this Court and for want of prosecution. (Docs. 4, 6) (citing FED. R. CIV. P. 41(b); *Ladien v. Astrachan*, 128 F.3d 1051 (7th Cir. 1997); *Johnson v. Kamminga*, 34 F.3d 466 (7th Cir. 1994)). This dismissal shall **NOT** count as a "strike" under 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, so the fee of \$400.00 remains due and payable. *See* 28 U.S.C. § 1915(b)(1); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998). A separate order will issue for the prison Trust Fund Officer to deduct payments from Plaintiff's trust fund account until the \$400.00 fee is paid in full.

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

IT IS SO ORDERED.

DATED: March 28, 2017

 Digitally signed by Judge
David R. Herndon
Date: 2017.03.28 15:13:31
-05'00'

District Judge
United States District Court