

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

**JOHNNIE GARRETT, # N20411, and
CHINA ANNE MCCLAIN,**

Plaintiffs,

vs.

PEOPLE OF STATE OF ILLINOIS,

Defendant.

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Case No. 17-cv-267-SMY

MEMORANDUM AND ORDER

YANDLE, District Judge:

On February 13, 2017, Plaintiff Johnnie Garrett filed a Complaint (Doc. 1) in the Middle District of Florida. His case was transferred to this Court on March 13, 2017. (Doc. 4). Plaintiff filed a Motion for Leave to Proceed *in forma pauperis* (“IFP Motion”) on April 10, 2017. (Doc. 27).

The Court denied Plaintiff’s IFP Motion on April 12, 2017, noting 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. 31, pp. 1-2). Plaintiff also failed to demonstrated imminent danger of serious physical injury. (Doc. 31, p. 3). He was therefore ordered to pay the full filing fee of \$400.00 by May 12, 2017, if he wished to proceed. (Doc. 31). The Court warned Plaintiff that failure to pay the fee by the deadline would result in dismissal of the action. (Doc. 31, p. 4) (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 deadline has now passed and Plaintiff has not paid the filing fee, nor has he requested an extension of the deadline for doing so. As such, Plaintiff is in clear violation of the

Court's Order. (Doc. 31). The Court will not allow this matter to linger indefinitely.

Accordingly, **IT IS HEREBY ORDERED** that this action is **DISMISSED** without prejudice based on Plaintiff's failure to comply with an Order of this Court and for want of prosecution. (Doc. 31) (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.

All pending motions in this case are hereby **DENIED** as moot.

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

IT IS SO ORDERED.

DATED: May 22, 2017

s/ STACIM. YANDLE
District Judge
United States District Court