Brooks v. Marvin et al Doc. 7

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

| COREY BROOKS, #M10971, |) | |
|-----------------------------|-----------------------|------|
| Plaintiff, |) | |
| vs. |) Case No. 17-cv-681- | -SMY |
| SGT. MARVIN, and MRS. HOPE, |))) | |
| Defendants. |) | |

MEMORANDUM AND ORDER

YANDLE, District Judge:

Plaintiff Corey Brooks commenced this action pursuant to 42 U.S.C. § 1983 on June 30, 2017. (Doc. 1). The Complaint did not survive threshold review under 28 U.S.C. § 1915, and it was dismissed for failure to state a claim upon which relief may be granted on August 22, 2017. (Doc. 6). The dismissal was without prejudice to Plaintiff filing a First Amended Complaint on or before September 19, 2017. 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. 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 \$350.00 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. 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: September 26, 2017

s/ STACI M. YANDLE

United States District Judge

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