

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

JAMES OSBORNE, # B-20626,

Plaintiff,

vs.

Case No. 18-cv-256-DRH

**JEFF DENNISION,
DR. DAVID,
and C/O SMITH,**

Defendants.

MEMORANDUM AND ORDER

HERNDON, District Judge:

This matter is before the Court for case management. Plaintiff filed this action on February 12, 2018. (Doc. 1). His brief statement of claim indicated that he had been deprived of medications. On March 22, 2018, this Court entered an order dismissing the Complaint pursuant to 28 U.S.C. § 1915A for failure to state a claim upon which relief may be granted (Doc. 6). Plaintiff was given until April 19, 2018, to file an amended complaint if he wished to further pursue his claim for deliberate indifference to his medical needs, and the Clerk mailed him a blank complaint form for his use in preparing his amended pleading.

Plaintiff submitted a change of address notice on April 5, 2018, showing that he had been released from Shawnee Correctional Center, and had moved to West Frankfort, Illinois. (Doc. 7). The original envelope containing the March 22, 2018 Order and complaint form was returned to the Clerk as undeliverable. (Doc. 8). On April 16, 2018, the Order and complaint form were re-sent to Plaintiff at his new address in West Frankfort. That envelope was presumably delivered, because it has not been returned to the Court.

Plaintiff was warned in the March 22, 2018 Order that if he failed to submit an amended complaint, this case would be dismissed with prejudice, and the dismissal would count as a “strike” under 28 U.S.C. § 1915(g).

Plaintiff's April 19, 2018 deadline has come and gone, and the Court has deferred action on the case for 4 weeks in order to allow for delivery of the order to Plaintiff at his updated address, and for additional time to respond. Nonetheless, Plaintiff has failed to submit an amended complaint, and has not responded in any way to the Court's order. This action is therefore subject to dismissal for failure to prosecute.

IT IS THEREFORE ORDERED that this action is **DISMISSED with prejudice** for failure to prosecute. FED. R. CIV. P. 41(b); *see generally James v. McDonald's Corp.*, 417 F.3d 672, 681 (7th Cir. 2005); *Ladien v. Astrachan*, 128 F.3d 1051 (7th Cir. 1997); *Lucien v. Breweur*, 9 F.3d 26, 29 (7th Cir. 1993) (dismissal for failure to prosecute is presumptively with prejudice).

The Clerk is **DIRECTED** to **CLOSE THIS CASE** and enter judgment accordingly.

Because the original Complaint (filed while Plaintiff was a prisoner) failed to state a claim upon which relief may be granted, this dismissal shall count as one of Plaintiff's three allotted "strikes" under the provisions 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 dismissal, his notice of appeal must be filed with this Court within thirty days of the entry of judgment. FED. R. APP. P. 4(a)(1)(A). A motion for leave to appeal *in forma pauperis* should set forth the issues Plaintiff plans to present on appeal. *See* FED. R. APP. P. 24(a)(1)(C). 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. P. 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.

IT IS SO ORDERED.

David Herndon



Judge Herndon

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United States District Judge