

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
(at Lexington)

NAVARIUS SAVELL WESTBERRY,)	
)	
Plaintiff,)	Civil Action No. 18-545-DCR
)	
v.)	
)	
PAM D. PERLMAN and)	MEMORANDUM OPINION
WILLIAM SWINFORD,)	AND ORDER
)	
Defendants.)	

*** **

Plaintiff Navarius Westberry is a prisoner currently incarcerated at the United States Penitentiary-Hazelton in Bruceton Mills, West Virginia. Proceeding without a lawyer, he has filed a civil rights complaint pursuant to *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971), seeking monetary damages based on allegations that Defendants Pamela Perlman and William Swinford, the attorneys appointed to represent him in his underlying criminal case, denied him his Fifth Amendment due process rights. [Record No. 1]. However, Westberry did not pay the \$400.00 filing fee, nor did he file a motion to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915.

On September 25, 2018, the Court entered an Order advising Westberry of this omission and directing the Clerk to provide him with the forms needed to file a motion to proceed *in forma pauperis*. [Record No. 6] The Court directed Westberry to either pay the \$400.00 in filing fees or complete and file the supplied forms within twenty-one days. [*Id.*] Westberry was warned that his complaint would be dismissed if he failed to comply. [*Id.*]

More than twenty-one days have passed and Westberry has not responded in any way. The Court therefore will dismiss the complaint for failure to prosecute and failure to comply with an Order of the Court. Fed. R. Civ. P. 41(b); *Palasty v. Hawk*, 15 F. App'x 197, 199-200 (6th Cir. 2001).

Although dismissal in these circumstances is usually without prejudice, Westberry previously filed an identical complaint against the same parties in *Westberry v. Perlman, et al.*, Civil Action No. 5: 18-196-DCR (E.D. Ky. 2018). In that case, the Court found that Westberry's constitutional claims seeking monetary damages against Perlman and Swinford were frivolous and dismissed Westberry's complaint with prejudice. *Id.* at Record No. 5, 6. Inasmuch as the complaint filed in this case is identical to the complaint filed in Civil Action No. 5: 18-196-DCR, the Court concludes that Westberry's complaint in this case should likewise be dismissed with prejudice for the same reasons as stated in the Court's Memorandum Opinion and Order entered in that case. *Id.* at Record No. 5.

Accordingly, it is hereby **ORDERED** as follows:

1. Westberry's Complaint [Record No. 1] is **DISMISSED**, with prejudice.
2. This action is **STRICKEN** from the Court's docket.

Dated: October 23, 2018.



Signed By: 

Danny C. Reeves

United States District Judge