

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

DAVID SCOTT JOHNSON(#84970)

VERSUS

CIVIL ACTION

BURL CAIN, ET AL

NUMBER 09-454-BAJ-SCR

**RULING**

Pro se plaintiff, an inmate at Louisiana State Penitentiary, Angola, Louisiana, filed this action pursuant to 42 U.S.C. § 1983 against Warden Burl Cain, Asst. Warden Joe Lemartinere, Asst. Warden Troy Poret, Capt. Antonio Whitaker and Capt. Marcus Callahan. Plaintiff alleged that Capt. Whitaker subjected him to an excessive use of force in violation of his constitutional rights.<sup>1</sup>

Plaintiff filed a motion to proceed in forma pauperis.<sup>2</sup> On October 19, 2009, the plaintiff's motion to proceed in forma pauperis was granted.<sup>3</sup> On August 13, 2012, the order issued October 19, 2009 granting the plaintiff in forma pauperis status was vacated<sup>4</sup> because on three prior occasions during detention, the plaintiff brought an action that was dismissed as frivolous or for failure to state a claim upon

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<sup>1</sup> The remainder of the plaintiff's claims were previously dismissed. Record document number 39.

<sup>2</sup> Record document number 2.

<sup>3</sup> Record document number 7.

<sup>4</sup> Record document number 146.

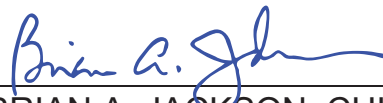
which relief can be granted.<sup>5</sup>

Plaintiff's motion to proceed in forma pauperis pursuant to 28 U.S.C. § 1915 was denied and the plaintiff was granted 21 days from the date of the order to pay the balance of the court's filing fee in the amount of \$294.40.<sup>6</sup>

A review of the record showed that the plaintiff failed to pay the filing fee. Therefore, the plaintiff's § 1983 complaint shall be dismissed without prejudice.

Judgment shall be entered accordingly.

Baton Rouge, Louisiana, September 6, 2012.



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BRIAN A. JACKSON, CHIEF JUDGE  
UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

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<sup>5</sup> Section 1915(g) contains an exception that allows prisoners whose privileges have been revoked to proceed in forma pauperis in cases involving imminent danger of serious physical injury. Plaintiff's claims do not fall under the exception.

<sup>6</sup> Record document number 146.