

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

CAREY LOUIS HOOD (#299810)

VERSUS

CIVIL ACTION

DORTHY PAGE, ET AL

NUMBER 12-287-SDD-SCR

**RULING ON MOTION FOR RECONSIDERATION**

Before the court is the plaintiff's Motion to Reconsideration. Record document number 75.

On December 11, 2013, the plaintiff's in forma pauperis status was revoked pursuant to 28 U.S.C. § 1915(g).<sup>1</sup> Plaintiff is now before the court seeking reconsideration of the Order Revoking In Forma Pauperis status on the ground that he has not accumulated three strikes.

Plaintiff conceded that he accumulated a strike in CV 10-158-JVP-SCR, and apparently does not dispute that he accumulated a strike on appeal in CV 13-303-JJB-SCR. However, he contends that he did not accumulate a strike in CV 09-950-JTT-JDK. Plaintiff argued that although the district court granted a motion to dismiss for failure to state a claim upon which relief can be granted and he appealed the dismissal, the appeal was later dismissed pursuant to his motion and should not count as a strike.

On November 5, 2013, the United States Court of Appeals for

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<sup>1</sup> Record document number 74, Order Revoking In Forma Pauperis Status.

the Fifth Circuit determined that the plaintiff has accumulated at least three strikes under 28 U.S.C. § 1915(g), and that he may not proceed in forma pauperis in any civil action or appeal filed in a court of the United States while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. See *Carey Louis Hood v. Kimberly Vessel, et al*, No. 13-30592 (5th Cir. November 5, 2013).

There is no indication in the record that the Fifth Circuit Court of Appeals considered the appeal in CV 09-950-JTT-JDK as a strike. Rather, it appears from a review of the record in CV 09-950-JTT-JDK that the Fifth Circuit considered as a strike the June 23, 2010 ruling granting the defendants' Supplemental Motion to Dismiss (record document number 27) which dismissed the plaintiff's claims against Burl Cain and James LeBlanc in their entirety, and from which the plaintiff appealed.<sup>2</sup>

The Fifth Circuit Court of Appeals determined that the plaintiff has accumulated three strikes and now is barred from proceeding in forma pauperis. This court does not have the discretion to disregard the appellate court's determination. Insofar as the plaintiff argued that he does not have three strikes, his argument is unavailing.

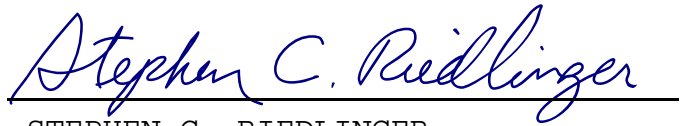
Accordingly, the plaintiff's Motion to Reconsideration is

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<sup>2</sup> The appellate court's decision in No.13-30592 (M.D.La. case CV13-303) referenced the Magistrate Judge's Report and Recommendation in CV 09-950 issued April 21, 2010, which was later adopted by the district judge.

denied.

Baton Rouge, Louisiana, December 18, 2013.

A handwritten signature in blue ink that reads "Stephen C. Riedlinger". The signature is written in a cursive style and is positioned above a solid horizontal line.

STEPHEN C. RIEDLINGER  
UNITED STATES MAGISTRATE JUDGE