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UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

FREDERICK BANKS,))
Plaintiff,)
v.) Civil Action No. 16-10972-DJC
ROBERT CESSAR, et al.,)
Defendants.)))

ORDER

CASPER, J. April 13, 2017

Now before the Court are the plaintiff's motions to appeal *in forma pauperis*. For the reasons set forth below, the motions are DENIED.

As the Court explained in its earlier orders of July 21, 2016 (D. 4) and February 7, 2017 (D. 9), Banks is a pretrial detainee and therefore is a prisoner within the meaning of 28 U.S.C. § 1915(h). That he is currently hospitalized to receive mental health evaluation and treatment to possibly restore him to competency, see <u>United States v. Banks</u>, Crim. No. 2:15-cr-00168-MRH (W.D. Pa.), does not change his prisoner status. The basis of his confinement is a pending criminal prosecution—not a civil proceeding. <u>See, e.g., Gibson v. City Municipality of New York</u>, 692 F.3d 198, 202 (2d Cir. 2012) (per curiam) (holding that where state criminal proceedings were suspended but not terminated while plaintiff underwent treatment to restore capacity, plaintiff was a prisoner for purposes of 28 U.S.C. § 1915(h)).

Banks is a "three strikes" litigant, meaning that he has, while a prisoner, filed three or more civil cases in federal court that were dismissed as malicious or frivolous or for failure to state a claim for relief. See 28 U.S.C. § 1915(g). He can only proceed without prepayment of a

fee if his case presents a claim of imminent danger of serious physical injury. See id. No such

claim exists in this action, which is why the Court would not allow him to proceed in forma

pauperis and dismissed the case after he failed to pay the filing fee. Because the "three strikes"

rule applies to appeals as well as cases filed in the district court, see id., Banks cannot appeal in

forma pauperis.

Further, Banks does not appear to be financially eligible for in forma pauperis status. He

represents in his motions that he owns real estate valued at \$250,000, a vehicle valued at

\$30,000, and stocks of an unspecified value. He also reports that he has cash or money in a

checking or savings account. Although his handwriting is unclear, it appears in the first-filed

motion (D. 13) that the amount thereof is \$50,000. Without further clarification of the amount

and nature of these alleged assets, the Court cannot conclude that he is unable to pay the appeal

fee.

The motions to appeal in forma pauperis (D. 13, 14) are DENIED. Banks may file a

motion to appeal in forma pauperis with the United States Court of Appeals for the First Circuit

within 30 days of service of this order. See Fed. R. App. P. 24(a)(5). The Clerk shall

immediately transmit this order to the First Circuit.

SO ORDERED.

/s/ Denise J. Casper

United States District Judge

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