

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DARRYL McGORE,

Plaintiff,

v.

Case No. 11-12133

ROBERT SHENK,

Defendant.

**OPINION AND ORDER
DENYING LEAVE TO PROCEED WITHOUT PREPAYMENT OF FEES,
DENYING COMPLAINT FOR WRIT OF MANDAMUS,
DENYING MOTIONS TO AMEND, AND
DISMISSING THE COMPLAINT PURSUANT TO 28 U.S.C. § 1915(g)**

On May 16, 2011, Plaintiff Darryl McGore filed a civil rights complaint under 42 U.S.C. § 1983. Plaintiff has since filed two motions to amend the complaint, a petition for writ of mandamus, and an application for leave to proceed without prepayment of the fees and costs for this action pursuant to 28 U.S.C. § 1915(a). Although the pleadings are barely legible, it appears that Plaintiff alleges that Defendant Robert Shenk, a police officer in Hazel Park, Michigan, stopped Plaintiff on the highway for driving with a burnt out headlight. In Plaintiff's vehicle, Defendant apparently found a .38 caliber revolver, which was presented as evidence during the subsequent criminal trial. Plaintiff claims that Defendant admitted to perjuring himself and to falsely placing the gun in evidence simply to have a reason to accuse Plaintiff. The complaint seeks money damages and release from custody on the grounds that Plaintiff was falsely arrested, maliciously prosecuted, and falsely imprisoned.

The petition for a writ of mandamus seeks to order the court to grant Plaintiff's application to proceed without prepayment of fees. The motions to amend the complaint seek to add claims that Defendant was grossly negligent and deliberately indifferent to Plaintiff's safety. Neither raises any danger of imminent physical injury.

Indigent prisoners may seek to bring a civil action without prepayment of the fees and costs for the action. 28 U.S.C. 1915(a)(2). However, pursuant to the "three strikes" provision of the Prison Litigation Reform Act,

[i]n no event shall a prisoner bring a civil action . . . under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). At least three of Plaintiff's prior complaints have been dismissed as frivolous or for failure to state a claim. See *McGore v. Unknown Gooch*, No. 1:11-cv-340, slip op. at 3 (W.D. Mich. Apr. 14, 2011) (collecting cases). Plaintiff also has been denied leave to proceed *in forma pauperis* on multiple occasions due to having "three strikes." *Id.* (collecting cases). Furthermore, Plaintiff has not demonstrated that he falls within the exception to the "three strikes" rule. His allegations of "'false imprisonment' and other violations connected with his criminal trial . . . do not bring him within the 'imminent danger' exception" of § 1915(g). *Fails v. McCollum*, No. 1:09-cv-00019, 2009 WL 1530818, at *1 (N.D. Fla. May 26, 2009). Accordingly,

IT IS ORDERED that Plaintiff's application to proceed without prepayment of the fees and costs for this action [Dkt. # 2] and complaint for a writ of mandamus [Dkt. # 4] are DENIED pursuant to 28 U.S.C. § 1915(g).

IT IS FURTHER ORDERED that Plaintiff's prisoner civil rights complaint [Dkt. # 1] is DISMISSED without prejudice.

Finally, IT IS ORDERED that Plaintiff's motions to amend the complaint [Dkt. ## 5 & 6] are DENIED as moot.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: June 8, 2011

I hereby certify that a copy of the foregoing document was mailed to Plaintiff Darryl McGore, #142739, Oaks Correctional Facility, 1500 Caberfae Highway, Manistee, MI 49660, on this date, June 8, 2011, by ordinary mail.

s/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522

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