## UNITED STATES DISTRICT COURT WESTERN DISTRICT OF MICHIGAN NORTHERN DIVISION

DARRYL MCGORE,

Plaintiff,

Case No. 2:18-cv-103

v.

Honorable Robert J. Jonker

BILL SCHUETTE et al.,

Defendants.

OPINION DENYING LEAVE TO PROCEED IN FORMA PAUPERIS - THREE STRIKES

This is a civil action purportedly seeking mandamus relief. Plaintiff seeks leave to proceed *in forma pauperis*. Because Plaintiff has filed at least three lawsuits that were dismissed as frivolous, malicious or for failure to state a claim, he is barred from proceeding *in forma pauperis* under 28 U.S.C. § 1915(g). The Court will order Plaintiff to pay the \$400.00 civil action filing fee applicable to those not permitted to proceed *in forma pauperis*. This fee must be paid within twenty-eight (28) days of this opinion and accompanying order. If Plaintiff fails to pay the fee, the Court will order that this case be dismissed without prejudice. Even if the case is dismissed, Plaintiff must pay the \$400.00 filing fee in accordance with *In re Alea*, 286 F.3d 378, 380-81 (6th Cir. 2002).

## **Discussion**

The Prison Litigation Reform Act (PLRA), Pub. L. No. 104-134, 110 Stat. 1321 (1996), which was enacted on April 26, 1996, amended the procedural rules governing a prisoner's request for the privilege of proceeding *in forma pauperis*. As the Sixth Circuit has stated, the PLRA was "aimed at the skyrocketing numbers of claims filed by prisoners—many of which are

meritless—and the corresponding burden those filings have placed on the federal courts." *Hampton* v. *Hobbs*, 106 F.3d 1281, 1286 (6th Cir. 1997). For that reason, Congress created economic incentives to prompt a prisoner to "stop and think" before filing a complaint. *Id.* For example, a prisoner is liable for the civil action filing fee, and if the prisoner qualifies to proceed *in forma* pauperis, the prisoner may pay the fee through partial payments as outlined in 28 U.S.C. § 1915(b). The constitutionality of the fee requirements of the PLRA has been upheld by the Sixth Circuit. *Id.* at 1288.

In addition, another provision reinforces the "stop and think" aspect of the PLRA by preventing a prisoner from proceeding *in forma pauperis* when the prisoner repeatedly files meritless lawsuits. Known as the "three-strikes" rule, the provision states:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under [the section governing proceedings *in forma pauperis*] 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). The statutory restriction "[i]n no event," found in § 1915(g), is express and unequivocal. The statute does allow an exception for a prisoner who is "under imminent danger of serious physical injury." The Sixth Circuit has upheld the constitutionality of the three-strikes rule against arguments that it violates equal protection, the right of access to the courts, and due process, and that it constitutes a bill of attainder and is *ex post facto* legislation. *Wilson v. Yaklich*, 148 F.3d 596, 604-06 (6th Cir. 1998).

Plaintiff has been an active litigant in the federal courts in Michigan. In many more than three of Plaintiff's lawsuits, the Court entered dismissals on the grounds that the cases were frivolous, malicious or failed to state a claim. *See, e.g., McGore v. Wrigglesworth et al.*, No. 5:96-cv-197 (W.D. Mich. Jan 8, 1997); *McGore v. Mich. Sup. Ct. Judges*, No. 1:94-cv-517 (W.D. Mich.

Jan. 25, 1995); McGore v. Nardi et al., No. 2:93-cv-137 (W.D. Mich. Aug. 2, 1993); McGore v.

Stine et al., No. 2:93-cv-112 (W.D. Mich. July 26, 1993); McGore v. Stine et al., No. 2:93-cv-77

(W.D. Mich. Apr. 30, 1993). Although many of the dismissals were entered before enactment of

the PLRA on April 26, 1996, the dismissals nevertheless count as strikes. See Wilson, 148 F.3d at

604. In addition, Plaintiff previously has been denied leave to proceed in forma pauperis on

numerous occasions for having three strikes. Moreover, Plaintiff's allegations do not fall within

the "imminent danger" exception to the three-strikes rule. 28 U.S.C. § 1915(g). Plaintiff does not

allege facts showing that he is in imminent danger of serious physical injury.

Therefore, § 1915(g) prohibits Plaintiff from proceeding in forma pauperis in this

action. Plaintiff has twenty-eight (28) days from the date of entry of this order to pay the entire

civil action filing fee, which is \$400.00. When Plaintiff pays his filing fee, the Court will screen

his complaint as required by 28 U.S.C. § 1915A. If Plaintiff does not pay the filing fee within the

28-day period, this case will be dismissed without prejudice, but Plaintiff will continue to be

responsible for payment of the \$400.00 filing fee.

Dated: November 2, 2018

/s/ Robert J. Jonker

ROBERT J. JONKER

CHIEF UNITED STATES DISTRICT JUDGE

SEND REMITTANCES TO THE FOLLOWING ADDRESS:

Clerk, U.S. District Court 399 Federal Building

110 Michigan Street, NW

Grand Rapids, MI 49503

All checks or other forms of payment shall be payable to "Clerk, U.S. District Court."

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