

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

| | | |
|--------------------------------|---|---------------------------|
| CODY LEE ANDERSON, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No. 4:21-CV-1214 PLC |
| |) | |
| UNITED STATES OF AMERICA |) | |
| FEDERAL COURT EASTERN DISTRICT |) | |
| OF MISSOURI, |) | |
| |) | |
| Defendant. |) | |

MEMORANDUM AND ORDER

This closed case is before the Court upon self-represented plaintiff Cody Lee Anderson's letter to the Clerk of Court construed as a motion for additional time to pay the initial filing fee. ECF No. 12.

Plaintiff is a federal prisoner who was sentenced by this Court¹ and is currently incarcerated at the Coleman I U.S. Penitentiary in Coleman, Florida. On October 12, 2021, plaintiff filed this action on a civil rights complaint form pursuant to 42 U.S.C. § 1983 against the United States of America Federal Court, Eastern District of Missouri, alleging he was incorrectly sentenced as an armed career criminal. ECF No. 1. Plaintiff also filed a motion for leave to proceed *in forma pauperis*. ECF No. 2. For relief, he sought to be resentenced.

On October 18, 2021, the Court granted plaintiff leave to proceed *in forma pauperis*, and directed him to pay an initial filing fee of \$15.00 within twenty-one (21) days of the Order. ECF

¹ On April 18, 2017, plaintiff pled guilty to one count of felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). *United States v. Anderson*, Case No. 4:17-CR-23-RWS-1. He was sentenced on October 30, 2017 to a term of 144 months of incarceration and two years of supervised release. Plaintiff appealed his sentence to the United States Court of Appeals for the Eighth Circuit, which was dismissed as untimely.

No. 7. The Court also dismissed this action without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B) for two reasons: (1) his claim against the United States District Court of the Eastern District of Missouri was barred by the doctrine of sovereign immunity; and (2) a criminal judgment and sentence cannot be vacated through a civil rights lawsuit. *Id.* The Court explained that if he intended to challenge his conviction and sentence, he must proceed pursuant to 28 U.S.C. § 2255. *See id.* at 5. The Court directed the Clerk to provide plaintiff with the proper form for filing a motion to vacate, set aside, or correct sentence.

In the instant letter, plaintiff states he has been in solitary confinement under protective custody and has been unable to pay his initial filing fee. ECF No. 12. He seeks additional time to submit payment. For good cause shown, the Court will grant his request, and will permit him an additional thirty (30) days to pay his initial filing fee of \$15.00.

To any extent plaintiff is requesting additional time to file a motion to vacate, set aside, or correct his federal sentence under 28 U.S.C. § 2255, the Court will decline to grant such an extension. The October 18, 2021 dismissal of this action was without prejudice to plaintiff filing a new action in the future should he decide to do so; however, the instant case is closed. If he wishes to bring a post-conviction challenge to the validity of his conviction and sentence, he must file a § 2255 motion with the judge who sentenced him. Such a challenge is separate and unrelated to this closed case which was brought pursuant to § 1983.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's letter to the Clerk of Court, construed as a motion for additional time to pay the initial filing fee, is **GRANTED**. [ECF No. 12]

IT IS FURTHER ORDERED that plaintiff shall pay his initial filing fee of \$15.00 within thirty (30) days of the date of this Order. Plaintiff is instructed to make his remittance payable to “Clerk, United States District Court,” and to include upon it: (1) his name; (2) his prison registration number; (3) the case number; and (4) that the remittance is for an original proceeding.



PATRICIA L. COHEN
UNITED STATES MAGISTRATE JUDGE

Dated this 19th day of November, 2021