

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

**FILED  
CLERK**

3/18/2016 12:10 pm

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ERWIN JACKSON,

**U.S. DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
LONG ISLAND OFFICE**

Plaintiff,

**ORDER**

15-CV-7218(SJF)(AKT)

-against-

THE COUNTY OF NASSAU, in its capacity as an [sic] Municipality; MERYL J. BERKOWITZ, in her official and individual capacity; and AMES C. GREWERT, in his official and individual capacity;

Defendants.

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FEUERSTEIN, District Judge:

## **I. Introduction**

On December 11, 2015, pro se plaintiff Erwin Jackson (“Plaintiff”), a prisoner at the Elmira Correctional Facility, filed a complaint against the County of Nassau, the Honorable Meryl J. Berkowitz, and Nassau County Assistant District Attorney Ames C. Grewert, raising allegations of due process violations in connection with post-conviction motions that Plaintiff filed in state court. (See Compl. (Dkt. 1)).<sup>1</sup> On the same day, Plaintiff also filed a motion to proceed in forma pauperis. (See Mot. (Dkt. 2)). Pursuant to the Prison Litigation Reform Act (“PLRA”), 28 U.S.C. § 1915(g), his motion to proceed in forma pauperis is denied. Accordingly, Plaintiff must pay the three hundred and fifty dollar (\$350.00) filing fee within fourteen (14) days of the date of this Order or the action will be dismissed.

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<sup>1</sup> Plaintiff also asserts that the defendants violated his First Amendment rights (see Compl. (Dkt. 1) at ¶ 1), but Plaintiff’s claims sound in procedural due process, if anything, not First Amendment.

## **II. Discussion**

28 U.S.C. § 1915(g)<sup>2</sup> of the PLRA prohibits a prisoner from proceeding in forma pauperis in federal court if he has previously filed three or more actions or appeals that were dismissed because they were frivolous, malicious, or failed to state a claim upon which relief could be granted, unless the prisoner plausibly alleges that he will imminently suffer serious injury. See 28 U.S.C. § 1915(g). Plaintiff has previously filed at least four (4) federal court actions challenging the existence and/or conditions of his imprisonment that were each dismissed for failure to state a claim upon which relief could be granted,<sup>3</sup> and he does not allege that he is in imminent danger of serious injury. (See Compl. (Dkt. 1), *passim*). Therefore, Plaintiff is barred from proceeding in forma pauperis under the PLRA. See, e.g., *Harris v. City of New York*, 607 F.3d 18, 24 (2d Cir. 2010) (affirming dismissal under PLRA’s “three strikes” rule); *Palmer v. New York State Dep’t of Corrections*, 342 Fed. Appx. 654, 656 (2d Cir. 2009) (same).

## **III. Conclusion**

Plaintiff’s application to proceed in forma pauperis is DENIED. Plaintiff is directed to pay the three hundred and fifty dollar (\$350.00) filing fee within fourteen (14) days of the date of this Order, or the Court will dismiss this action without further notice.

The Court also certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose

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2 28 U.S.C. § 1915(g) provides in full: “In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding 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 injury.”

3 See *Jackson v. Fischer*, 09-cv-00294 (N.D.N.Y. Mar. 17, 2009) (order dismissing in forma pauperis complaint for failure to state a claim upon which relief could be granted) [Dkt. 5]; *Jackson v. Cnty. of Nassau*, 06-cv-00040 (E.D.N.Y. Aug. 7, 2010) (same) [Dkt. 83]; *Jackson v. Mishler*, 01-CV-8155 (E.D.N.Y. Jan. 29, 2002) (same) [Dkt. 5]; *Jackson v. Walsh*, 00-CV-2290 (E.D.N.Y. Apr. 19, 2002) (same) [Dkt. 41].

of any appeal. See *Coppedge v. United States*, 369 U.S. 438, 444-45, 82 S. Ct. 917, 8 L. Ed. 2d 21 (1962); *Umoja v. Griffin*, Case No. 11-cv-0736, 2014 WL 2453620, at \*22 (E.D.N.Y. May 29, 2014).

**SO ORDERED.**

s/ Sandra J. Feuerstein  
Sandra J. Feuerstein  
United States District Judge

Dated: March 18, 2016  
Central Islip, New York