

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JAMES PETTUS,

Plaintiff,

v.

9:06-CV-0030 (LEK/DRH)

CAPTAIN RICHARDS, Cayuga Correctional
Facility, *et al.*,

Defendants.

APPEARANCES

OF COUNSEL:

JAMES PETTUS
03-R-3597
Plaintiff, *pro se*

HON. ANDREW M. CUOMO
New York State Attorney General
Attorney for Defendants

SENTA B. SIUDA, Esq.
Assistant Attorney General

LAWRENCE E. KAHN
United States District Judge

DECISION AND ORDER

Plaintiff James Pettus commenced this action by filing a *pro se* complaint, and an application to proceed *in forma pauperis*, on January 10, 2006. Dkt. Nos. 1, 2. By Order of this Court filed on April 18, 2006, Plaintiff's *in forma pauperis* application was granted and service of the complaint was directed. Dkt. No. 4. On October 30, 2007, Defendants filed a motion pursuant to 28 U.S.C. § 1915(g) to revoke Plaintiff's *in forma pauperis* status because Plaintiff had filed numerous prior frivolous lawsuits. Dkt. No. 25. Plaintiff opposed the motion and made a cross-motion for summary judgment. Dkt. No. 30. By Order of this Court filed on September 18, 2008, Plaintiff's cross-motion was denied and Defendants' motion to revoke Plaintiff's *in*

forma pauperis status was granted. Dkt. No. 42. Plaintiff's complaint was dismissed without prejudice as to all Defendants and all claims unless Plaintiff paid the full filing fee of \$250.00 within thirty days of the filing date of the September 18, 2008 Order. Id. On October 10, 2008, Plaintiff appealed from the September 18, 2008 Order to the United States Court of Appeals for the Second Circuit. Dkt. No. 43.

By Order dated February 27, 2009, issued as a Mandate on April 3, 2009, the Second Circuit Court of Appeals dismissed Plaintiff's appeal and directed that "upon receipt of this Court's mandate, the district court shall dismiss Appellant's case with prejudice and without affording him the opportunity to pay the required filing fee." Dkt. No. 46.

WHEREFORE, in accordance with the Mandate of the United States Court of Appeals for the Second Circuit, it is hereby

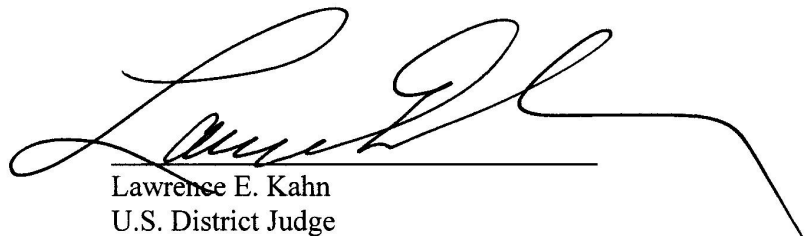
ORDERED, that Plaintiff's Complaint (Dkt. No. 1) is **DISMISSED with prejudice**; and it is further

ORDERED, that pursuant to 28 U.S.C. § 1915(a)(3), any appeal from this matter would not be taken in good faith; and it is further

ORDERED, that the Clerk serve a copy of this Order on the parties in accordance with the Local Rules.

IT IS SO ORDERED.

DATED: April 14, 2009
Albany, New York


Lawrence E. Kahn
U.S. District Judge