

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CYRIL SHEPPARD,

Plaintiff,

-against-

NEW YORK CITY DEPARTMENT OF
CORRECTIONS, *et al.*,

Defendants.

20-CV-9405 (CM)

ORDER

COLLEEN McMAHON, Chief United States District Judge:

By order dated December 15, 2020, the Court dismissed this action for Plaintiff's failure to either pay the filing fees or submit an application to proceed *in forma pauperis* ("IFP) and Prisoner Authorization. (ECF No. 5.) Plaintiff was not charged a filing fee for this action, and the action was dismissed without prejudice to Plaintiff's bringing his claims in a new complaint.

On December 19, 2020, Plaintiff gave his IFP Application and Prisoner Authorization to prison officials for mailing, and the Court received those documents on December 22, 2020. (ECF Nos. 7-8.) Plaintiff also submitted a notice of appeal, in which he explains that his delay in returning the IFP Application and Prisoner Authorization was due to problems at the facility where he is incarcerated.¹ (ECF No. 9.)

DISCUSSION

"The filing of a notice of appeal is an event of jurisdictional significance – it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58

¹ Plaintiff also requested an extension of time to appeal, even though his appeal was not late.

(1982).² Because Plaintiff's appeal divests this Court of jurisdiction over the action, the Court cannot reopen this matter while Plaintiff's appeal of the order of dismissal is pending, even though Plaintiff has now submitted his IFP Application and Prisoner Authorization.

Accordingly, should Plaintiff wish to proceed with this action, he must withdraw his appeal in the Second Circuit and notify this Court within 30 days that he has done so. If the Court receives such notification within 30 days and regains jurisdiction to act in this matter, the Court will reopen this case based on Plaintiff's filing of the IFP Application and Prisoner Authorization.³

Alternatively, because this action was dismissed without prejudice, nothing in this action prevents Plaintiff from filing a new complaint, together with an IFP Application and Prisoner Authorization, asserting the claims that he intended to raise in this matter. The Court therefore directs the Clerk of Court to send Plaintiff a prisoner civil rights complaint form with this order. If Plaintiff chooses to bring a new action instead of pursuing an appeal, his complaint will be assigned a new docket number, and he should not include this docket number on the new complaint.

CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Plaintiff, noting service on the docket. The Court grants Plaintiff 30 days from the date of this order to withdraw his appeal and notify this Court that he has done so. If Plaintiff notifies the Court within 30 days that he has

² If a party (1) files a motion under Federal Rule of Civil Procedure 60(b) within 28 days after judgment is entered, *see* Fed. R. App. P. 4(a)(4)(A)(vi), and (2) files a notice of appeal before the district court disposes of that motion, *see* Fed. R. App. P. 4(a)(4)(B)(i), the notice of appeal does not become "effective" until after the district court rules on the motion. Here, however, Plaintiff did not submit a motion for reconsideration.

³ Once the Court reopens this matter, the complaint will be screened under 28 U.S.C. § 1915(e)(2)(B).

withdrawn the appeal, and the Court regains jurisdiction to act in this matter, the Court will reopen this case and address his IFP Application.

Alternatively, because this action was dismissed without prejudice and before Plaintiff was charged any filing fees, Plaintiff can simply commence a new action asserting the same claims. For Plaintiff's convenience, a prisoner civil rights complaint form is attached to this order, and the Clerk of Court is directed to include an IFP Application and Prisoner Authorization with this order.

SO ORDERED.

Dated: January 7, 2021
New York, New York

A handwritten signature in black ink, appearing to read "Colleen McMahon", is written over a horizontal line.

COLLEEN McMAHON
Chief United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Write the full name of each plaintiff.

____ CV ____
(Include case number if one has been assigned)

-against-

COMPLAINT
(Prisoner)

Do you want a jury trial?

☐ Yes ☐ No

Write the full name of each defendant. If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section IV.

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

I. LEGAL BASIS FOR CLAIM

State below the federal legal basis for your claim, if known. This form is designed primarily for prisoners challenging the constitutionality of their conditions of confinement; those claims are often brought under 42 U.S.C. § 1983 (against state, county, or municipal defendants) or in a “*Bivens*” action (against federal defendants).

☐ Violation of my federal constitutional rights

☐ Other: _____

II. PLAINTIFF INFORMATION

Each plaintiff must provide the following information. Attach additional pages if necessary.

First Name	Middle Initial	Last Name
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State any other names (or different forms of your name) you have ever used, including any name you have used in previously filing a lawsuit.

Prisoner ID # (if you have previously been in another agency’s custody, please specify each agency and the ID number (such as your DIN or NYSID) under which you were held)

Current Place of Detention

Institutional Address

County, City	State	Zip Code
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III. PRISONER STATUS

Indicate below whether you are a prisoner or other confined person:

☐ Pretrial detainee

☐ Civilly committed detainee

☐ Immigration detainee

☐ Convicted and sentenced prisoner

☐ Other: _____

IV. DEFENDANT INFORMATION

To the best of your ability, provide the following information for each defendant. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are identical to those listed in the caption. Attach additional pages as necessary.

Defendant 1:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 2:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 3:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 4:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

V. STATEMENT OF CLAIM

Place(s) of occurrence: _____

Date(s) of occurrence: _____

FACTS:

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and how each defendant was personally involved in the alleged wrongful actions. Attach additional pages as necessary.

[illegible]

INJURIES:

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

VI. RELIEF

State briefly what money damages or other relief you want the court to order.

VII. PLAINTIFF'S CERTIFICATION AND WARNINGS

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I understand that if I file three or more cases while I am a prisoner that are dismissed as frivolous, malicious, or for failure to state a claim, I may be denied *in forma pauperis* status in future cases.

I also understand that prisoners must exhaust administrative procedures before filing an action in federal court about prison conditions, 42 U.S.C. § 1997e(a), and that my case may be dismissed if I have not exhausted administrative remedies as required.

I agree to provide the Clerk's Office with any changes to my address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

Dated	Plaintiff's Signature
First Name	Middle Initial
	Last Name
Prison Address	
County, City	State
	Zip Code

Date on which I am delivering this complaint to prison authorities for mailing: _____