

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

NORMAN V. WHITESIDE,

Plaintiff,

vs.

Civil Action 2:08-CV-875
Judge Graham
Magistrate Judge King

TERRY COLLINS, et al.,

Defendants.

OPINION AND ORDER

Plaintiff, a state inmate proceeding without the assistance of counsel, brings this action under 42 U.S.C. § 1983, alleging that Rules (C)(28), (50) and (51) under O.A.C. § 5120-9-06 are vague and lack fair notice. In a *Report and Recommendation* issued on August 23, 2011, the United States Magistrate Judge recommended that defendants' motion to revoke plaintiff's *in forma pauperis* status be granted and that plaintiff be required to pay the full \$350.00 filing fee. *Report and Recommendation*, Doc. No. 127. This matter is now before the Court on plaintiff's objections, Doc. No. 135, to that *Report and Recommendation* which the Court will consider *de novo*. 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b).

In finding that the defendants' motion to revoke *in forma pauperis* status was meritorious, the Magistrate Judge concluded that plaintiff had brought, on three or more occasions while incarcerated, an action that was dismissed on the ground that it fails to state a claim upon which relief may be granted. *Report and Recommendation*,

pp. 3-4 (citing *Whiteside v. ODRC*, Case No. 2:03-CV-439 (S.D. Ohio March 31, 2004); *Whiteside v. Ghee*, Case No. 2:96-CV-916 (S.D. Ohio Oct. 30, 1996); *Whiteside v. Wilkinson*, Case No. 2:00-CV-596 (S.D. Ohio May 18, 2000)). Plaintiff objects to the Court's decision to characterize the last case, *Whiteside v. Wilkinson*, No. 2:00-CV-596, as a strike because he was not a party to that case. Doc. No. 135, p. 1. In reviewing that case, the undersigned agrees that the *Wilkinson* litigation should not count as a strike against plaintiff. See *Whiteside v. Wilkinson*, No. 00-3902, 3 Fed. Appx. 372, at *372 (6th Cir. Feb. 1, 2001) (stating that the district court did not recognize, *inter alios*, Norman Whiteside as a party to the *Wilkinson* litigation). In light of this conclusion, the Court finds that plaintiff does not have three "strikes" against him and defendants' motion to revoke plaintiff's *in forma pauperis* status is without merit.

Accordingly, plaintiff's objections, Doc. No. 135, are well-taken and the *Report and Recommendation*, Doc. No. 127, is **OVERRULED**. Defendants' motion to revoke plaintiff's *in forma pauperis* status, Doc. No. 108, is **DENIED**.

The Court notes that a non-party, Karen G. Thimmes, paid the filing fee on behalf of plaintiff. Doc. No. 132. The Clerk is **DIRECTED** to refund to Ms. Thimmes, whose address appears on Doc. No. 132, the full \$350.00 filing fee.

Date: December 30, 2011

s/James L. Graham
James L. Graham
United States District Judge

