

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

Frank C. Brown, Jr.,

Plaintiff,

Case No. 2:10-cv-967

v.

**JUDGE EDMUND A. SARGUS, JR.
Magistrate Judge Kemp**

Warden Deb Timmerman-Cooper, et al.,

Defendants.

ORDER

The Court dismissed this prisoner civil rights case by way of an Opinion and Order filed on July 16, 2012. On July 27, 2012, Mr. Brown filed a timely notice of appeal. He did not pay the filing fee.

In the usual case, the Court would assess a partial filing fee based on a trust fund statement from Mr. Brown's institution (which, incidentally, he did not submit, and which the Court would ordinarily request before deciding if he should be allowed to proceed on appeal *in forma pauperis*). However, Mr. Brown has had three or more cases or appeals dismissed in the past as frivolous or for failure to state a claim. See Brown v. Porter, 2010 WL 3834408 (N.D. Ohio Sept. 28, 2010); Brown v. Blackwell, 2011 WL 63595 (S.D. Ohio Jan. 6, 2011); Brown v. Hurwood, 2011 WL 63591 (S.D. Ohio Jan, 6, 2011). Under that portion of the Prison Litigation Reform Act codified at 28 U.S.C. §1915(g), the so-called "three strikes" rule, a prisoner may not appeal a judgment in a civil case *in forma pauperis* if that prisoner "has, on 3 or more 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 ground 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

physical injury.” Thus, Mr. Brown is not entitled to proceed *in forma pauperis* and to pay the filing fee in installments unless he can demonstrate that he meets the “imminent danger” requirement of §1915(g). Otherwise, he must pay the entire filing fee (currently \$455.00) in order to pursue his appeal.

Mr. Brown has not addressed the issue of “imminent danger” in any manner, nor has he made any allegations from which the Court could conclude that his appeal involves an issue of imminent danger. Consequently, he is assessed the full appellate filing fee of \$455.00, payable within thirty days of the date of this order. If Mr. Brown fails to pay the entire filing fee within thirty days of this order, his appeal may be dismissed and may not be reinstated even upon full payment of the fee.

IT IS SO ORDERED.

8-14-2012

DATE



EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT JUDGE