

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

William E. Martin,

Plaintiff,

v.

Case No. 2:18-cv-270

Zamvir Zariwala,

Judge Michael H. Watson

Defendants.

Chief Magistrate Judge Deavers

OPINION AND ORDER

William E. Martin ("Plaintiff") filed this action on March 27, 2018, and moved to proceed *in forma pauperis*. Mot., ECF No. 1. The Magistrate Judge issued a Report and Recommendation ("R&R") recommending that the Court dismiss most of Plaintiff's claims pursuant to 28 U.S.C. § 1915(e)(2)(B) and 1915A but permit Plaintiff to proceed with his claims against Zamir Zariwala ("Defendant"). R&R, ECF No. 3. The Court adopted the R&R on October 4, 2019. ECF No. 9. Thereafter, Defendant moved to dismiss Plaintiff's Complaint on the basis that Plaintiff has had three prisoner civil rights cases dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B) for failure to state a claim ("three strikes"). Mot. to Dismiss, ECF No. 13. Plaintiff opposed Defendant's motion. Resp., ECF No. 14.

On April 2, 2019, the Magistrate Judge issued a R&R recommending that Defendant's motion to dismiss be denied without prejudice because Plaintiff's

three strikes do not require outright dismissal of the lawsuit. R&R 5–6, ECF No.

15. Instead, the Magistrate Judge recommended that:

Plaintiff's *in forma pauperis* status be revoked[]; that Plaintiff be required to pay the entire \$400 fee required to commence this action (\$350 filing fee plus \$50 administrative fee) within thirty (30) days of an Order adopting this Report and Recommendation; and that Plaintiff be notified that his failure to pay the full fee within thirty (30) days will result in the dismissal of the action.

R&R 6–7, ECF No. 15.

The R&R also recommended that the Court certify pursuant to 28 U.S.C. § 1915(a)(3) that for the reasons provided in the R&R, any appeal of the Order adopting the R&R would not be taken in good faith and to therefore deny Plaintiff leave to appeal *in forma pauperis*. *Id.* at 7.

Finally, the R&R notified the parties of their right to file objections to the R&R pursuant to 28 U.S.C. § 636(b)(1). *Id.* The R&R advised the parties that the failure to object to the R&R within fourteen days would result in a waiver of the right to *de novo* review by the District Judge and waiver of the right to appeal the decision of the District Court adopting the R&R. *Id.* The deadline for filing such objections has passed, and no objections were filed.

Having received no objections, the R&R is **ADOPTED**. Defendant's motion to dismiss is **DENIED WITHOUT PREJUDICE**. ECF No. 13. Plaintiff's *in forma pauperis* status is hereby **REVOKED**.

Accordingly, Plaintiff is **ORDERED** to pay the entire \$400 fee required to commence this action (\$350 filing fee plus \$50 administrative fee) within thirty (30) days of this Order. Plaintiff is warned that his **failure to pay the full filing fee within thirty (30) days will result in the dismissal of the action.** Finally, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that for the reasons provided in the R&R, any appeal of the Order adopting the R&R would not be taken in good faith and therefore **DENIES** Plaintiff leave to appeal *in forma pauperis*.

IT IS SO ORDERED.


MICHAEL H. WATSON, JUDGE
UNITED STATES DISTRICT COURT