

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DEMETRIUS BAILEY,

Plaintiff,

v.

JEFFREY BEARD, *et al.*,

Defendants.

Civil Action No. 08-308 Erie

MEMORANDUM ORDER

_____ This civil rights complaint was received by the Clerk of Court on November 6, 2008 and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates. On November 20, 2008, Plaintiff filed a motion for leave to proceed *in forma pauperis* [2], which was granted on July 16, 2009 [17]. On February 25, 2010, numerous Defendants filed a "Motion to Vacate IFP Order, Deny IFP Motion and Dismiss Complaint" [28].

The Magistrate Judge's Report and Recommendation [30], filed on March 1, 2010, recommends that: (i) the Defendants' motion be granted, (ii) the Court's July 16, 2009 Order granting *in forma pauperis* status be vacated, (iii) Plaintiff's motion for leave to proceed *in forma pauperis* be denied; and (iv) the complaint be dismissed without prejudice to Plaintiff's right to reopen the case by paying the required \$350.00 filing fee within sixty (60) days of the date of dismissal. The Magistrate Judge notes that, during his incarceration, the Plaintiff has filed at least three prior lawsuits which have been dismissed as legally frivolous or failing to state a claim upon which relief may be granted and, as a result, 28 U.S.C. § 1915(g) precludes the Plaintiff from bringing a civil action under the *in forma pauperis* statute, unless he is "under imminent danger of serious physical injury." 28 U.S.C. § 1915(g). The Magistrate Judge notes that no averments concerning "imminent danger of serious physical injury" have been made here.

The parties were allowed ten (10) days from the date of service in which to file objections. Service was made on Plaintiff by certified mail to SCI Fayette, where he is incarcerated. To date, no objections have been filed. After de novo review of the complaint and documents in the case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 8th day of April, 2010; IT IS ORDERED that:

1. The Defendants' Motion to Vacate IFP Order, Deny IFP Motion and Dismiss Complaint [28] be, and hereby is, GRANTED;
2. The Magistrate Judge's July 16, 2009 Order [17] granting Plaintiff *in forma pauperis* status be, and hereby is, VACATED;
3. Plaintiff's motion for leave to proceed *in forma pauperis* [2] be, and hereby is, DENIED;
4. This Court's prior Order of March 24, 2010 [58] regarding Notice of Inability to Effectuate Service [48] be, and hereby is, VACATED; and
5. The complaint be, and hereby is, DISMISSED WITHOUT PREJUDICE to Plaintiff's right to reopen the case by paying the required \$350.00 filing fee on or before June 7, 2010.

The Report and Recommendation of Magistrate Judge Baxter [30], dated March 1, 2010, is adopted as the opinion of this Court.

s/ SEAN J. McLAUGHLIN

Sean J. McLaughlin
United States District Judge

cc: all parties of record
U.S. Magistrate Judge Baxter