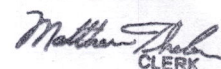


UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

FILED

NOV 17 2021


CLERK

SHANE D. WALIEZER,

Plaintiff,

vs.

JANE DOE, *et al.*,

Defendants.

1:21-CV-01020-CBK

ORDER DENYING APPLICATION
TO APPEAL *IN FORMA PAUPERIS*

Plaintiff filed this case pursuant to 42 U.S.C. § 1983 alleging that, in 2015 and 2017, defendants negligently violated his constitutional and statutory rights. The complaint was dismissed upon initial review pursuant to 28 U.S.C. § 1915(e)(2)(B) for failure to state a claim upon which relief may be granted. The dismissal counted as a third strike pursuant to 28 U.S.C. § 1915(g).

Plaintiff has filed a notice of appeal and an application to proceed on appeal *in forma pauperis* without the prepayment of the appellate filing fee. Fed. R. App. P. 24(a)(1)(C) provides that a party who desires to appeal *in forma pauperis* must file a motion and affidavit that states the issues that the party intends to present on appeal. Plaintiff has not substantially complied with Rule 24(a)(1). He filed his notice of appeal on what appears to be a form. It is not an appeal form provided by the United States District Courts.

Fed. R. App. P. 24(a)(3) authorizes a party who was permitted to proceed *in forma pauperis* in the District Court to proceed on appeal *in forma pauperis* unless the District Court certifies that the appeal is not taken in good faith. Plaintiff was authorized to proceed without the prepayment of the filing fees. However, I find that the appeal is not taken in good faith.

Plaintiff's complaint was dismissed upon initial screening conducted pursuant to 28 U.S.C. § 1915A(b). Plaintiff sought relief on the basis of alleged actions which occurred in conjunction with his state court criminal charges. I found that the complaint

was barred by Heck V. Humnhrev. 512 U.S. 477, 486-87, 114 S. Ct. 2364, 2372-73, 129 L. Ed. 2d 383 (1994) because the state court criminal proceeding was still pending. I further found that defendant's claims against the prosecutors in his state court criminal and habeas proceedings were barred by the doctrine of absolute prosecutorial immunity. Finally, I found that plaintiff's claims did not arise out of federal constitutional or statutory rights.

I certify that the plaintiff's appeal is not taken in good faith.

Now, therefore,

IT IS ORDERED that plaintiff's motion, Doc. 21, for leave to proceed on appeal without the prepayment of the filing fee is denied.

DATED this 16th day of November, 2021.

BY THE COURT:


CHARLES B. KORNMANN
United States District Judge