

United States District Court
Southern District of Texas

ENTERED

April 16, 2018

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

ALLEN YOUNG a/k/a BRITTNEY
YOUNG, TDCJ # 01412493

Plaintiff,

VS.

VIRGIL G MCMULLEN, *et al*,

Defendants.

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CIVIL ACTION NO. 3:18-CV-107

ORDER OF DISMISSAL

The plaintiff, Allen Young, also known as “Brittney” (TDCJ #01412493), is presently incarcerated by the Texas Department of Criminal Justice – Correctional Institutions Division (“TDCJ”) at the Ramsey I Unit in Rosharon. Young, who self-identifies as a “pseudo-male hermaphrodite with working female genitalia,” has filed a civil rights complaint under 42 U.S.C. § 1983, alleging that Warden Virgil McMullen and the University of Texas Medical Branch (“UTMB”) John Sealy Hospital in Galveston have failed to provide “female sanitary pads and pantys [*sic*]” during Young’s monthly menstrual cycles. Young requests leave to proceed with this civil action without prepayment of the filing fee (Dkt. 2). That request will be denied and this case will be dismissed without prejudice at this time for reasons explained briefly below.

Because Young is incarcerated, this case is governed by the Prison Litigation Reform Act (the “PLRA”), which was enacted, in part, to prevent prisoners from abusing the privilege of proceeding *in forma pauperis*. See *Adepegba v. Hammons*, 103 F.3d 383,

387 (5th Cir. 1996). Under the “three-strikes” rule established by the PLRA, a prisoner is not allowed to bring a civil action *in forma pauperis* in federal court if, while incarcerated, three or more of his civil actions or appeals were dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted, unless he is in “imminent danger of serious physical injury.” 28 U.S.C. § 1915(g); *Adepegba*, 103 F.3d at 385. To fit within that exception, a prisoner must demonstrate that imminent danger of serious physical injury exists at the time the plaintiff seeks to file his complaint. *Banos v. O’Guin*, 144 F.3d 883, 885 (5th Cir. 1998).

Court records reflect that Young has previously filed several civil actions in the federal district courts while incarcerated. At least four of those actions have been dismissed as frivolous or for failure to state a claim: (1) *Young v. Adams*, Civil No. W-09-259 (W.D. Tex. March 10, 2010); (2) *Young v. University of Texas Medical Branch Correctional Health Care*, Civil No. 6:11-363 (E.D. Tex. Jan. 30, 2012); (3) *Young v. Allen*, Civil No. 6-11-596 (E.D. Tex. April 9, 2012); and (4) *Young v. Balogun*, Civil No. 6:12-553 (E.D. Tex. Sept. 10, 2012). As a result, Young has accumulated more than three strikes for purposes of § 1915(g).¹

Young seeks injunctive relief in the form of an order directing prison officials at the Ramsey I Unit to provide “feminine hygiene” supplies, but his complaint indicates that Young has not previously attempted to exhaust administrative grievance procedures in place at the prison (Dkt. 1, p. 3). Young does not otherwise allege facts showing that

¹ Although the form complaint asks for plaintiff’s previous litigation history, Young does not mention any of these cases (Dkt. 1, p. 2).

there is any imminent danger of serious physical injury in this case or that the exception found in § 1915(g) applies. Accordingly, this action will be dismissed without prejudice as barred by the three-strikes rule.

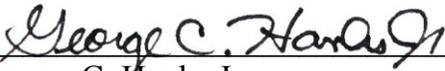
Based on the foregoing, the Court **ORDERS** as follows:

1. The motion for leave to proceed *in forma pauperis* filed by plaintiff Allen Young (Dkt. 2) is **DENIED**.
2. Young's motion to compel the defendants to provide female sanitary pads and other items (Dkt. 3) is also **DENIED**.
3. This case is **DISMISSED** without prejudice to re-filing upon payment of the full filing fee (\$400.00).

The Clerk is directed to provide a copy of this Order to the plaintiff. The Clerk will also provide a copy of this Order by email to the Manager of the Three-Strikes List for the Southern District of Texas at: Three_Strikes@txs.uscourts.gov.

The Clerk will provide a copy of this Order to the plaintiff.

SIGNED at Galveston, Texas, this 16th day of April, 2018.



George C. Hanks Jr.
United States District Judge