

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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| JAMES HAWLEY, | § | |
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| Plaintiff, | § | |
| | § | |
| v. | § | CIVIL ACTION NO. H-13-1918 |
| | § | |
| FLOYD A. LANDSEY, INC., | § | |
| ETHAN L. SHAW, | § | |
| | § | |
| Defendants. | § | |

OPINION ON DISMISSAL

Plaintiff, James Hawley (a.k.a. Jamie Hawley), an inmate confined at the Lebanon Correctional Institution in Ohio, filed this civil rights suit under 42 U.S.C. § 1983. Plaintiff also filed a motion to proceed *in forma pauperis* under 28 U.S.C. § 1915. (Docket No. 2.) The Complaint (Docket No. 1) names as defendants the Moore Landrey law firm in Beaumont, Texas, and two attorneys with the firm, Floyd A. Landry and Ethan L. Shaw. Plaintiff alleges that Defendants stole his share of a class action settlement involving the Southwestern Life Insurance Company. Plaintiff seeks reimbursement for stock he allegedly owned in the company.

Under 28 U.S.C. § 1915(g), a prisoner cannot file a civil action *in forma pauperis* in federal court if, on three or more prior occasions, while incarcerated, he brought an action that was dismissed for being frivolous, malicious, or failing to state a

claim upon which relief may be granted. The only exception to this revocation of an inmate's privilege to proceed *in forma pauperis* is if he is in immediate danger of serious physical harm. Banos v. O'Guin, 144 F.3d 883, 884 (5th Cir. 1998).


Plaintiff's present suit is clearly subject to the three-strikes bar under Section 1915(g) because his complaint does not indicate that he is in any danger and his litigation history reveals that he has previously filed numerous cases in the federal courts that were dismissed as frivolous or failing to state a claim. See Hawley v. State of Ohio, et al., Case No. 1:08-cv-198 (S.D. Ohio March 31, 2008) (complaint dismissed for failure to state a claim); Hawley v. Brown & Williamson Tobacco Corp., Case No. 1:95-cv-694 (S.D. Ohio Apr. 5, 1996) (complaint dismissed as malicious, repetitive); Hawley v. Ohio Dep't of Admin. Services, Case No. 2:96-cv-50 (S.D. Ohio June 10, 1996) (complaint dismissed for failure to state a claim); Hawley v. Ohio Public Defender, Case No. 2:96-cv-391 (S.D. Ohio May 3, 1996) (complaint dismissed as frivolous); Hawley v. State of Ohio, Case No. 1:05-cv-169 (N.D. Ohio Mar. 17, 2005) (complaint dismissed for failure to state a claim for relief). In addition, Plaintiff previously attempted to file in the Eastern District of Texas a complaint practically identical to the one presented here and was denied pauper status

under the three-strikes rule. See Hawley v. Moore, et al., Case No. 1:09-cv-850 (E.D. Tex. Oct. 27, 2009) (Docs. 4,7, 8).

Accordingly, it is ORDERED that this complaint is DISMISSED under 28 U.S.C. § 1915(g). Any pending motions are further DENIED.

The Clerk will provide a copy of this Order to Plaintiff and to the Clerk of the United States District Court for the Eastern District of Texas, Tyler Division, 211 West Ferguson, Tyler, Texas, 75702, Attention: Betty Parker, Three-Strikes List Manager.

SIGNED at Houston, Texas, on October 26, 2013.


EWING WERLEIN, JR.
UNITED STATES DISTRICT JUDGE