

United States District Court
Southern District of Texas

ENTERED

June 07, 2018

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION**

JESSE FRANK LARA,
(TDCJ-CID #01863734)
Plaintiff,

vs.

EVELYN CASTRO, *et al.*,
Defendants.

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CIVIL ACTION V-18-0020

MEMORANDUM ON DISMISSAL

Jesse Frank Lara, a Texas Department of Criminal Justice inmate, sued in April 2018, alleging civil rights violations resulting from a denial of due process. Lara seeks leave to proceed *in forma pauperis*. Lara, proceeding pro se, sues Evelyn Castro, Warden of Stevenson Unit; Paul A. Conner, attorney; Bill Lane, attorney; James W. Lane, attorney; and Chris Harrison, Assistant District Attorney for Tarrant County, Texas.

The threshold issue is whether Lara's claims should be dismissed as barred by the three-strikes provision of 28 U.S.C. § 1915(g). The Court concludes that Lara's claims are barred and should be dismissed for the reasons stated below.

I. Plaintiff's Allegations

Lara challenges a judgment in the 213th Judicial District Court in Tarrant County, Texas, imposed on August 3, 1993. (Cause Number 0443272). Lara asserts that his retained counsel were not present during criminal proceedings and that another attorney improperly entered an appearance on behalf of Lara. Lara asserts that the attorneys conspired with the prosecutor to convict Lara. He complains that the trial court lacked jurisdiction to impose a valid judgment and sentence.

Lara seeks unspecified injunctive and declaratory relief. He further seeks unspecified compensatory and punitive damages.

II. Analysis

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 or 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).

Lara's litigation history reveals that he has previously submitted abusive and scurrilous filings in federal court. Prior to filing this action, he had at least three suits dismissed as frivolous. *Lara v. Shannon*, 4:14-0719-A (N.D. Tex.)(dismissed as frivolous on October 15, 2014); *Lara v. Shannon*, 4:13-0207-Y (N.D. Tex.)(dismissed as frivolous on June 14, 2013); and *Lara v. Gill*, 4:04-0285-Y (N.D. Tex.)(dismissed as frivolous on April 28, 2004).

In the present case, Lara has not alleged, nor does his complaint demonstrate, that he is in imminent danger of serious physical injury. Accordingly, Lara is barred under 28 U.S.C. § 1915(g) from proceeding *in forma pauperis* in this action.

III. Conclusion

Lara's Motion to Proceed as a Pauper, (Docket Entry No. 2), is DENIED. The complaint filed by Jesse Frank Lara (TDCJ-CID #01863734) is DISMISSED under 28 U.S.C. § 1915(g).¹

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In *Adepegba v. Hammons*, 103 F.3d 383 (5th Cir. 1998), the Fifth Circuit barred an inmate from proceeding further under the statute, except for cases involving an imminent danger of serious physical injury, and dismissed all of Adepegba's i.f.p. appeals pending in that court. The Fifth Circuit noted that the inmate could resume any claims dismissed under section 1915(g), if he decided to pursue them, under the fee provisions of 28 U.S.C. §§ 1911-14 applicable to everyone else.

Lara's Motion for Injunctive Relief, (Docket Entry No. 5), is DENIED. All pending motions are DENIED. Lara is warned that continued frivolous filings may result in the imposition of sanctions.

The TDCJ-CID must deduct twenty percent of each deposit made to plaintiff's inmate trust account and forward payments to the Court on a regular basis, provided the account exceeds \$10.00, until the filing fee obligation of \$350.00 is paid in full.

The Clerk will provide a copy of this order by regular mail, facsimile transmission, or e-mail to:

- (1) the TDCJ - Office of the General Counsel, Capitol Station, P.O. Box 13084, Austin, Texas 78711, Fax: 512-936-2159;
- (2) the Inmate Trust Fund, P.O. Box 629, Huntsville, Texas 77342-0629, Fax: 936-437-4793; and
- (3) the Manager of the Three-Strikes List for the Southern District of Texas at: Three_Strikes@txs.uscourts.gov.

SIGNED at Victoria, Texas, on June 6, 2018.



KENNETH M. HOYT
UNITED STATES DISTRICT JUDGE