

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

THOMAS ODELL KELLY,

Petitioner,

v.

CASE NO. 07-3092-SAC

L.E. BRUCE,
et al.,

Respondents.

O R D E R

This action was filed as a petition for writ of habeas corpus, 28 U.S.C. 2254, by an inmate of the El Dorado Correctional Facility, El Dorado, Kansas. However, in an Order entered May 15, 2007, the court found plaintiff's complaints about his placement, retention, and conditions in administrative segregation are challenges to the conditions of his confinement not properly raised in a federal habeas corpus petition, and construed this action as a civil rights complaint. In the same Order, this court found Mr. Kelly has previously been designated a three-strikes litigant under 28 U.S.C. § 1915(g), and nothing in the documents submitted in this case suggested he is in "imminent danger of serious physical injury." The court accordingly denied Mr. Kelly's motions for leave to proceed in forma pauperis and granted him thirty (30) days in which to submit the \$350.00 filing fee. Plaintiff was advised that failure to pay the full filing fee within the time allotted would result in dismissal of this action without prejudice.

Plaintiff thereafter filed a motion to modify or vacate the court's judgment, which was denied; and an interlocutory appeal, which was dismissed for lack of prosecution. The time for

plaintiff to submit the filing fee in order to proceed in this action has long since expired, and no filing fee has been submitted. The court concludes this action must be dismissed, without prejudice for failure to pay the filing fee.

IT IS THEREFORE ORDERED that this action is dismissed and all relief is denied.

IT IS SO ORDERED.

Dated this 16th day of January, 2008, at Topeka, Kansas.

s/Sam A. Crow
U. S. Senior District Judge