

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

MARCUS A. MALEY,

Plaintiff,

v.

CASE NO. 10-3090-SAC

STATE OF KANSAS,
et al.,

Defendants.

O R D E R

Upon screening this complaint, the court entered an Order requiring plaintiff to either pay the filing fee or submit a properly supported motion to proceed in forma pauperis; and to show cause why this action should not be dismissed as frivolous for reasons stated therein.

In response, Mr. Maley filed a motion for leave to proceed in forma pauperis with financial data attached. As plaintiff has already been forewarned, under 28 U.S.C. § 1915(b)(1), a plaintiff granted such leave is not relieved of the obligation to pay the full fee of \$350.00 for filing a civil action. Instead, being granted leave to proceed without prepayment of fees merely entitles an inmate to proceed without prepayment of the full fee, and to pay the filing fee over time through payments deducted automatically from his inmate trust fund account as authorized by 28 U.S.C. § 1915(b)(2). Furthermore, § 1915(b)(1), requires the court to assess an initial partial filing fee of twenty percent of the

greater of the average monthly deposits or average monthly balance in the prisoner's account for the six months immediately preceding the date of filing of a civil action. Having examined the records of plaintiff's inmate account, the court finds the average monthly deposit was \$55.17, and the average monthly balance was \$49.24. The court therefore assesses an initial partial filing fee of \$11.00, twenty percent of the average monthly deposit, rounded to the lower half dollar. Plaintiff must immediately submit this initial partial filing fee to the court. In addition, pursuant to §1915(b)(2), the Finance Office of the facility where plaintiff is confined is directed by copy of this Order to collect twenty percent (20%) of the prior month's income each time the amount in plaintiff's account exceeds ten dollars (\$10.00) until the filing fee has been paid in full. Plaintiff is directed to cooperate fully with his custodian in authorizing disbursements to satisfy the filing fee, including but not limited to providing any written authorization required by the custodian or any future custodian to disburse funds from his account.

In response to the court's screening Order, Mr. Maley filed a pleading entitled "Summary", a Motion for Speedy Trial, and two other documents which the court has considered as supplements (Docs. 7 & 9). Having considered all materials in the file, the court finds that Mr. Maley has not shown cause why this action should not be dismissed as frivolous. Instead, he simply repeats and makes additional bizarre or delusional statements that are not supported by any credible facts or actual evidence. He also still

fails to name proper defendants. The court concludes that this action must be dismissed as frivolous pursuant to 28 U.S.C. § 1915A(a) and (b).

In the court's screening Order, plaintiff was also directed to show cause why this and a prior action should not be considered "prior occasions" under 28 U.S.C. 1915(g). He has not provided any reason why this case and Maley v. State of Kansas, Case No. 08-3146-SAC (June 24, 2008), should not each be treated as a prior occasion or strike, giving him two strikes under § 1915(g).

IT IS THEREFORE ORDERED that plaintiff's Motion to Proceed Without Prepayment of Fees (Doc. 5) is granted, and he is assessed an initial partial filing fee of \$11.00 that is due immediately and must be submitted to the court as well as the remainder of the full fee to be collected through payments from his inmate account.

IT IS FURTHER ORDERED that this action is dismissed as frivolous.

IT IS FURTHER ORDERED that this case and Case No. 08-3146 are each designated as a "prior occasion" under 28 U.S.C. § 1915(g), giving Mr. Maley "two strikes" under § 1915(g).

IT IS FURTHER ORDERED that plaintiff's Motion for Speedy Trial (Doc. 8) is denied as moot.

The clerk is directed to transmit a copy of this Order to the finance officer at the institution in which plaintiff is currently confined.

IT IS SO ORDERED.

Dated this 8th day of July, 2010, at Topeka, Kansas.

s/Sam A. Crow

U. S. Senior District Judge