

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ANTHONY LEROY DAVIS,

Plaintiff,

v.

CASE NO. 11-3135-SAC

UNITED STATES DISTRICT COURT,
DISTRICT OF KANSAS,

Defendant.

O R D E R

Before the court is a pro se complaint submitted by a prisoner incarcerated in a state correctional facility in Kansas. Plaintiff titles his pleading as a "COMPLAINT ON AN ACCOUNT," seeks certification to the United States Attorney General pursuant to 28 U.S.C. § 2403,¹ and appears to challenge the amounts owed and paid in filing fees for his previous actions and appeals in federal court.

It also appears plaintiff is challenging the constitutionality of 28 U.S.C. § 1915(g), a "3-strike" provision whereby a prisoner is not allowed to bring an in forma pauperis civil action or appeal in federal court if, on three or more prior occasions, while incarcerated, he brought an action which was dismissed as frivolous or for failure to state a claim upon which relief may be granted, unless he is under imminent danger of serious physical injury. The court has previously notified plaintiff that absent a showing that

¹28 U.S.C. § 2403 directs a district court to notify the Attorney General "if the constitutionality of Act of Congress affecting the public interest is drawn into question," and to permit intervention by the United States to present admissible evidence and argument on the constitutional question.

he is under imminent danger of serious physical injury, he has lost the right to proceed in forma pauperis in federal court because of his repeated prosecution of frivolous lawsuits.

In the instant matter, plaintiff essentially disputes one or more of the "strikes" previously identified by the court in plaintiff's litigation history, and seeks \$1,500 in damages plus interest for filing fees paid in cases and appeals that were summarily dismissed and not allowed to proceed on the merits of plaintiff's claims.² However, plaintiff did not submit the \$350.00 filing fee to proceed in federal court on the instant complaint, and plaintiff makes no allegation or showing that he is under imminent danger of serious physical injury for purposes of avoiding the "3-strike" bar in § 1915(g) in order to proceed in forma pauperis without prepayment of the district court filing fee. The court thus dismisses the complaint.

IT IS THEREFORE ORDERED that the complaint is dismissed without prejudice, and that plaintiff's pending motions (Docs. 5 and 7) are thereby rendered moot.

IT IS SO ORDERED.

DATED: This 1st day of November 2011 at Topeka, Kansas.

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

²Court records disclose that plaintiff has fully satisfied all district and appellate filing fee obligations related to his previous cases in the District of Kansas but for one case in which payment of the district and appellate filing fees continues.