

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ROBERT JAMES MALONE,

Plaintiff,

v.

CASE NO. 12-3034-SAC

DEPARTMENT of
CORRECTIONS, et al.,

Defendants.

O R D E R

This pro se civil complaint was filed on forms for a complaint pursuant to 28 U.S.C. § 1331 by an inmate at the Larned Correctional Mental Health Facility, Larned, Kansas. Plaintiff has neither paid the filing fee nor submitted a motion to proceed without prepayment of the fee.

A complaint under § 1331 is for suing employees of the United States such as federal prison guards, and not for suing employees or agencies of the State of Kansas. The court therefore finds that this complaint has been submitted upon the wrong forms. Any constitutional claim that Mr. Malone may have regarding the conditions of his confinement must be submitted on forms for filing a complaint under 42 U.S.C. § 1983.

Mr. Malone has previously been designated as a three-strikes litigant. See Malone v. Alonzo, 97-3064-GTV (May 16, 1997). He has been informed many times in court orders that 28 U.S.C. § 1915(g) now applies to him and provides:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court that is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

Id. He has also been repeatedly informed that he is required to "pay up front for the privilege of filing . . . any additional civil actions," unless he can show "imminent danger of serious physical injury." 28 U.S.C. 1915(g); Jennings v. Natrona County Detention Center, 175 F.3d 775, 778 (10th Cir. 1999).

The court finds that none of the facts alleged by plaintiff in his complaint establishes that he is in imminent danger of serious physical injury.¹ Accordingly, Mr. Malone may proceed in this action only if he pays the filing fee of \$350.00 for filing a civil complaint.

IT IS THEREFORE BY THE COURT ORDERED that plaintiff is granted twenty (20) days to pay the filing fee of \$350.00 or this action will be dismissed.

IT IS SO ORDERED.

Dated this 27th day of March, 2012, at Topeka, Kansas.

¹ In this complaint, Mr. Malone claims he is being denied access to the courts and a law library, that defendants are retaliating against him due to his family being murdered by "their security staff" (an incredible claim he has repeatedly raised), that his legal mail is being confiscated (another of his repeated claims), and that he is going to be punished for filing lawsuits with a transfer.

s/Sam A. Crow

U. S. Senior District Judge