

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

JOSEPH LEE JONES,

Plaintiff,

v.

CASE NO. 20-3068-SAC

(fnu) REILING, et al.,

Defendants.

MEMORANDUM AND ORDER

This matter is a civil rights action filed under 42 U.S.C. § 1983. Plaintiff commenced this action while detained at the Douglas County Jail. Because he is subject to 28 U.S.C. § 1915(g), the court screened the complaint to determine whether plaintiff alleged that he was in imminent danger of serious physical injury. Concluding that he had not plausibly alleged such conditions, the court directed him to pay the full filing fee. When he did not, the matter was dismissed without prejudice on April 10, 2020.

On August 17, 2020, plaintiff filed a motion for reconsideration. The court denied that motion on February 3, 2021, and on February 25, 2021, plaintiff filed a notice of appeal (Doc. 13) and a combined motion to file a federal tort for negligence and to reopen this matter.

The court has considered the record and denies plaintiff's combined motion to file and motion to reopen. This matter was dismissed without prejudice, and plaintiff therefore may file a new action, if he chooses to do so.

Because plaintiff is now held at the Larned State Hospital, the court has reviewed the on-line docket sheet of his criminal action

in Douglas County, Case No. 2019-CR-1075, to determine whether he is still a "prisoner" as defined by the Prison Litigation Reform Act¹. Because the state court record shows that the criminal action remains pending and that plaintiff's transfer is related to a competency evaluation, the court concludes that plaintiff remains subject to the Prison Litigation Reform Act, including 28 U.S.C. § 1915(g). The court therefore denies leave to proceed on appeal in forma pauperis and directs plaintiff to submit the appellate filing fees of \$505.00 to the clerk of the court.

IT IS, THEREFORE, BY THE COURT ORDERED plaintiff's motion to file a federal negligence action and to reopen this matter (Doc. 14) is denied.

IT IS FURTHER ORDERED plaintiff is denied leave to proceed on appeal in forma pauperis.

IT IS SO ORDERED.

DATED: This 26th day of February, 2021, at Topeka, Kansas.

S/ Sam A. Crow

SAM A. CROW

U.S. Senior District Judge

¹ 28 U.S.C. § 1915(h) states: As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.