

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

NATE A. LINDELL,

Plaintiff

v.

OPINION AND ORDER

19-cv-626-wmc

SUE NOVAK, SHANNON
SCHMIDTKNECHT, SGT. FOSSHAGE,
C.O. NICK PESAVENTO, and
I.C.E. MICHAEL GLASS,

Defendants.

Under § 1915(g), “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 of the United States that was dismissed on the grounds that it 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.” *Pro se* plaintiff Nate A. Lindell, a prisoner at Columbia Correctional Institution (“Columbia”), filed this lawsuit pursuant to 42 U.S.C. § 1983, against five Columbia employees, claiming that five Columbia employees have been retaliating against him for filing inmate complaints, in violation of his First Amendment rights. Despite knowing he was subject to the restriction of § 1915(g), Lindell further filed a motion for leave to proceed in this case *in forma pauperis*. (Dkt. #3.) Although this case has been taken under advisement for screening pursuant to 28 U.S.C. §§ 1915(e)(2), 1915A, the court is dismissing it with prejudice, as a sanction for Lindell’s failure to disclose that he is subject to § 1915(g)’s restriction.

RELEVANT BACKGROUND

Long before July 31, 2019, when Lindell filed a motion for leave to proceed in this action *in forma pauperis* in this lawsuit, Lindell had “struck out” under § 1915(g). He earned one strike in *Lindell v. Huibregtse*, No. 05-C-3-BBC (W.D. Wis.), since the Court of Appeals for the Seventh Circuit amended the district court’s judgment to be a dismissal with prejudice as frivolous or malicious, and a second because the court dismissed his appeal for the same reason, *Lindell v. Huibregtse*, 205 F. App’x 446, 450 (7th Cir. 2006) (noting explicitly that Lindell incurred a “strike” for filing the appeal). Lindell earned a third strike in *Lindell v. Esser*, No. 13-cv-563-wmc, dkt. #15 (W.D. Wis. Apr. 1, 2015), because his case was dismissed for failure to state a claim, and the court’s dismissal order informed Lindell that he had earned a strike, *see id.* at 2. Finally, he earned a fourth strike in 2007 when his petition for certiorari to the United States Supreme Court was dismissed as frivolous or malicious. *Lindell v. Huibregtse*, 549 U.S. 1336 (2007). Lindell did not disclose *any* of these dismissals when he filed his motion, or subsequently when this court and the Eastern District of Wisconsin recognized his status.

Indeed, between January and April of 2020, Lindell was explicitly informed no less than *five* times that he has struck out. Three courts in the Eastern District of Wisconsin, and Magistrate Judge Crocker in this district court, either revoked Lindell’s *in forma pauperis* status or denied him leave to proceed *in forma pauperis* pursuant to § 1915(g). *Lindell v. Boughton*, No. 18-cv-895, dkt. #70 (W.D. Wis. April 1, 2020); *Lindell v. Litscher*, No. 18-cv-1021-slc, dkt. #26 (W.D. Wis. April 30, 2020); *Lindell v. Greff*, No. 19-cv-0827, 2020 WL 2113787, at *4 (W.D. Wis. May 4, 2020); *Lindell v. Kind*, No. 19-cv-702, 2020 WL

847353, at *1 (E.D. Wis. Feb. 20, 2020); *Lindell v. Pollard*, No. 19-cv-255-LA-WED (E.D. Wis. Jan. 13, 2020). Moreover, on April 22, 2021, Judge Crocker granted defendants' motion to dismiss the '1021 case as a sanction for Lindell's failure to disclose his struck out status. *Lindell v. Litscher*, No. 18-cv-1021-slc, dkt. #50. The Seventh Circuit recently affirmed that dismissal, rejecting Lindell's challenge to the dismissal on the grounds that he paid the filing fee, that he had been allowed to proceed in other cases and that he had no duty to disclose his status. *Lindell v. Jess*, No. 21-2221, 2022 WL 42730, (7th Cir. Jan. 5, 2022).

Lindell did not inform this court about *any* of these proceedings until February 12, 2021, when Lindell filed a letter in this case. (Dkt. #11.) At that point, mistakenly believing that Judge Crocker was presiding over that case, Lindell disclosed that the defendants were seeking dismissal as a sanction in the '1021 case, and suggested that the court retract his *in forma pauperis* status in this case. However, absent from Lindell's letter was any effort to explain, much less excuse, his months-long silence in the face of several orders explicitly informing him of his struck out status.

OPINION

The Court of Appeals for the Seventh Circuit recently reaffirmed that “[a] litigant who knows that he has accumulated three or more frivolous suits or appeals must alert the court to that fact,” dismissing a prisoner's appeal for failing to inform the court that he had struck out. *Connor v. Adams*, No. 20-2309, 834 F. App'x 266, 267 (7th Cir. Jan. 22, 2021) (quoting *Ammons v. Gerlinger*, 547 F.3d 724, 725 (7th Cir. 2008)). Moreover, in affirming

Judge Crocker’s dismissal of Lindell’s lawsuit, that court emphasized the obligation struck-out plaintiffs have to “disclose their status and pay filing fees *before* commencing their suits,” and that “paying the fee later does not cure the misconduct of improperly seeking in forma pauperis status in the first place.” *Lindell*, 2022 WL 42730, at *2 (citing *Isby v. Brown*, 856 F.3d 508, 521 (7th Cir. 2017); *Ammons*, 547 F.3d at 725).

As noted above, Lindell was explicitly informed that he had incurred two strikes by 2015, and it is reasonable to infer, given Lindell’s demonstrated capabilities in this court, that he was well-aware that the restrictions of § 1915(g) applied to him in July of 2019, when he filed this lawsuit. Worst yet, despite the flurry of orders between January and April 2020 making Lindell’s obligation to disclose his status clear, Lindell filed *nothing* in this court until February of 2021, when the defendants in the ’1021 lawsuit before Judge Crocker sought dismissal of that case as a sanction. Only then, *ten months* later, when Lindell realized the potential for the same sanction in this court, did Lindell take seriously his obligation to disclose his struck out status. Seeing no basis to excuse Lindell’s misconduct, the court is dismissing this lawsuit with prejudice, as a sanction for Lindell’s failure to disclose that he had accumulated three or more dismissals.

ORDER

IT IS ORDERED that:

- 1) Plaintiff Nate Lindell’s motion for leave to proceed *in forma pauperis* is DENIED, pursuant to 28 U.S.C. § 1915(g).

2) This lawsuit is DISMISSED with prejudice.

Entered this 25th day of January, 2022.

BY THE COURT

/s/

WILLIAM M. CONLEY
District Judge