

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

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MICHAEL SCOTT,

Plaintiff,

v.

ORDER

11-cv-90-bbc

LORRAINE MCCABE, NEAL CONLEY,
SCOTT PELOWSKI, PAUL THOMPSON,
MARLYN TINSLEY and MICHAEL KOCH,

Defendants.

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In this civil action for monetary relief brought pursuant to 42 U.S.C. § 1983, plaintiff Michael Scott alleges that defendants, members of the Milwaukee County Sheriff's Department, violated his due process rights under the Fourteenth Amendment by lying about an incident at the Milwaukee County Courthouse in which plaintiff injured his elbow. Plaintiff seeks leave to proceed in forma pauperis on his claims. I must first determine whether plaintiff qualifies for in forma pauperis status under 28 U.S.C. § 1915(g), which bars a plaintiff from seeking pauper status if he has been assessed three strikes for bringing frivolous lawsuits.

Review of plaintiff's previous lawsuits shows that on three previous occasions, plaintiff was denied leave to proceed in forma pauperis on at least one claim that was legally frivolous.

Scott v. McCabe, no. 10-cv-138-bbc (W.D. Wis. Apr. 26, 2010); Scott v. Aurora Sinai Medical Center, no. 09-C-745 (E.D. Wis. Sept. 23, 2009); Scott v. Marquette University Department of Public Safety, no. 06-C-384 (E.D. Wis. Jan. 8, 2007). However, in a recent opinion, the Court of Appeals for the Seventh Circuit held that "a strike is incurred under § 1915(g) when an inmate's case is dismissed in its entirety based on the grounds listed in § 1915(g)," rather than when only one claim out of several is dismissed under § 1915(g). Turley v. Gaetz, 625 F.3d 1005, 1012 (7th Cir. 2010). Under this rule, two of plaintiff's strikes remain valid, but plaintiff should not have received a strike in Scott v. Marquette University Department of Public Safety because he was allowed to proceed on several claims in that case. Because plaintiff has only two strikes, he is not barred from proceeding in forma pauperis.

However, before this court may decide whether plaintiff may proceed with his claims, he will have to make an initial partial payment of the filing fee. From the trust fund account statement plaintiff has submitted, I calculate his initial partial payment to be \$0.03. Also, he must pay the remainder of the fee in monthly installments even if his request for leave to proceed is denied. If plaintiff does not have the money to make the initial partial payment in his regular account, he will have to arrange with prison authorities to pay some or all of the assessment from his release account. This does not mean that plaintiff is free to ask prison authorities to pay all of his filing fee from his release account. The only amount plaintiff must pay at this time is the \$0.03 initial partial payment. Before prison

officials take any portion of that amount from plaintiff's release account, they may first take from plaintiff's regular account whatever amount up to the full amount plaintiff owes. Plaintiff should show a copy of this order to prison officials to insure that they are aware they should send plaintiff's initial partial payment to this court.

ORDER

IT IS ORDERED that plaintiff is assessed \$0.03 as an initial partial payment of the \$350 fee for filing this case. He is to submit a check or money order made payable to the clerk of court in the amount of \$0.03 on or before April 13, 2011. If, by April 13, 2011, plaintiff fails to make the initial partial payment or show cause for his failure to do so, he will be held to have withdrawn this action voluntarily. In that event, the clerk of court is directed to close this file without prejudice to plaintiff's filing his case at a later date.

Entered this 23d day of March, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge