

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Frederick Banks v. Jordan Cisco, et al.

Banks · No. 25-cv-19020-ESK-MJS · Decided February 6, 2026

SUMMARY

The United States District Court for the District of New Jersey denied Frederick Banks’s motion for reconsideration of the denial of his application to proceed in forma pauperis. The court held that Banks was subject to the Prison Litigation Reform Act’s three-strikes provision because he was incarcerated when he filed the complaint and had at least three qualifying prior dismissals. The court concluded that Banks’s arguments concerning his incarceration history, American Indian status, and the prior dismissals did not warrant reconsideration.

CASE DETAILS

COURT	United States District Court for the District of New Jersey
WRITING FOR THE COURT	Edward S. Kiel
JURISDICTION	United States District Court for the District of New Jersey
DECIDED	February 6, 2026
DOCKET	25-cv-19020-ESK-MJS
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved for reconsideration of the court's prior order denying his application to proceed in forma pauperis under the Prison Litigation Reform Act's three-strikes provision.
STANDARD OF REVIEW	A motion for reconsideration under Local Civil Rule 7.1(i) is granted only in extraordinary circumstances upon an intervening change in controlling law, newly available evidence, or the need to correct a clear error of law or fact or prevent manifest injustice; the prior decision must have overlooked a factual or legal issue that may alter the disposition.
PRECEDENTIAL VALUE	unpublished

TOPICS

- motion for reconsideration
- prisoners rights
- civil rights
- statutory interpretation
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether plaintiff established grounds for reconsideration under Local Civil Rule 7.1(i).
2. Whether the PLRA applies to plaintiff despite his assertion that he is an American Indian and has not been continuously incarcerated.
3. Whether plaintiff had at least three qualifying dismissals for purposes of the PLRA three-strikes provision.

HOLDINGS

1. Reconsideration was not warranted because plaintiff did not identify an intervening change in controlling law, newly available evidence, a clear error of law or fact, manifest injustice, or an overlooked issue that could alter the disposition.
2. The PLRA applies to plaintiff because he was incarcerated in federal prison and serving a sentence when he filed his complaint and in forma pauperis application; continuous incarceration and plaintiff's asserted American Indian status do not alter that result.
3. Plaintiff had at least three qualifying dismissals and therefore was subject to the PLRA's three-strikes provision.

KEY QUOTATIONS

“Relief under Local Civil Rule 7.1(i) ‘is an extraordinary remedy that is granted ‘very sparingly.’” (at 272)

“To prevail, the movant must present ‘(1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court [made its initial decision]; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice.’” (at 677)

“The ‘three strikes’ provision was ‘designed to filter out the bad claims and facilitate consideration of the good.’” (at 539)

FACTUAL BACKGROUND

Frederick Banks, a prisoner serving a sentence at FCI Fort Dix, submitted a Bivens complaint and sought to proceed in forma pauperis. He was incarcerated when he filed the complaint and application. The court identified at least three prior qualifying dismissals, including dismissals of appeals as frivolous and a complaint for failure to state a claim.

PROCEDURAL HISTORY

Plaintiff filed a Bivens complaint and an application to proceed in forma pauperis. The court denied the application on December 30, 2025, finding that plaintiff was subject to the PLRA's three-strikes provision. Plaintiff moved for reconsideration, arguing that the PLRA did not apply to him and that he lacked three qualifying dismissals. The court denied the motion.

DISPOSITION

other

CASES CITED

- *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971)
- *Rich v. State*, 294 F. Supp. 3d 266, 272 (D.N.J. 2018)
- *Max's Seafood Café v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999)
- *Andreyko v. Sunrise Senior Living, Inc.*, 993 F. Supp. 2d 475, 478 (D.N.J. 2014)
- *Parker v. Montgomery Cnty. Corr. Facility/Bus. Off. Manager*, 870 F.3d 144, 149 n. 8 (3d Cir. 2017)
- *Coleman v. Tollefson*, 575 U.S. 532, 539 (2015)
- *Jones v. Bock*, 549 U.S. 199, 204 (2007)
- *Banks v. U.S. Marshal*, 274 F. App'x 631, 635 (10th Cir. 2008)
- *Banks v. Cnty. of Allegheny*, 568 F. Supp. 2d 579, 585 (W.D. Pa. 2008)
- *In re Banks*, 450 F. App'x 155, 157 n. 1 (3d Cir. 2011)

OPINION

UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY FREDERICK BANKS, Case No. 25–cv–19020–ESK–MJS Plaintiff, v. OPINION JORDAN CISCO, et al., Defendants. KIEL, U.S.D.J. Plaintiff Frederick Banks, a prisoner detained in FCI Fort Dix, New Jersey, submitted a Complaint pursuant to *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971) (Complaint). (ECF No. 1.)

He also sought permission to proceed in forma pauperis (Application). (ECF No. 1–1.) I denied the Application on December 30, 2025 after concluding that plaintiff was subject to the Prison Litigation Reform Act's (PLRA) "three strikes" provision. (ECF No. 4.) Plaintiff now moves for reconsideration of that order (Motion). (ECF No. 5.) Motions for reconsideration are governed within this District by Local Civil Rule 7.1(i).

Rich v. State, 294 F. Supp. 3d 266, 272 (D.N.J. 2018). "A brief setting forth concisely the matter or controlling decisions which the party believes the Judge has overlooked shall be filed with" the notice of motion for reconsideration. L. Civ. R. 7.1(i). Relief under Local Civil Rule 7.1(i) "is an extraordinary remedy that is granted 'very sparingly.'" *Rich*, 294 F. Supp. 3d at 272 (quoting L. Civ.

R. 7.1(i) cmt. 6(d)). To prevail, the movant must present "(1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court [made its initial decision]; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice." *Id.* (alteration in original) (quoting *Max's Seafood Café v. Quinteros*, 176 F.3d 669, 677 (3d Cir.

1999)). A court “will grant a motion for reconsideration only where its prior decision has overlooked a factual or legal issue that may alter the disposition of the matter.” *Andreyko v. Sunrise Senior Living, Inc.*, 993 F. Supp. 2d 475, 478 (D.N.J. 2014). Plaintiff argues “[r]econsideration is warranted because the Court overlooked controlling principles of statutory construction and material facts demonstrating that the Prison Litigation Reform Act does not apply to plaintiff” because he is an American Indian and has not been continuously incarcerated.

(ECF No. 5 pp. 1, 2.) He also disputes that he has at least three qualifying dismissals. (Id. p. 3.) None of plaintiff’s arguments warrant reconsideration. The PLRA defines “prisoner” as “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.” 28 U.S.C. § 1915(h).

Plaintiff is a person who is serving a sentence in federal prison. (ECF No. 1 p. 1.) Therefore, the statute applies to him. It is irrelevant for PLRA purposes that plaintiff has not been continuously incarcerated. The applicability of the PLRA’s three strikes provision is determined by the date plaintiff filed the Complaint and Application. *Parker v. Montgomery Cnty.*

Corr. Facility/Bus. Off. Manager, 870 F.3d 144, 149 n. 8 (3d Cir. 2017). Plaintiff was incarcerated at the time of filing, so he is subject to the PLRA’s restrictions. Furthermore, “[t]he ‘three strikes’ provision was ‘designed to filter out the bad claims and facilitate consideration of the good.’” *Coleman v. Tollefson*, 575 U.S. 532, 539 (2015) (quoting *Jones v. Bock*, 549 U.S. 199, 204 (2007)).

Allowing prisoners to “reset” their three strikes after release and reincarceration would not serve this purpose. Plaintiff has had at least three qualifying dismissals: *Banks v. U.S. Marshal*, 274 F. App’x 631, 635 (10th Cir. 2008) (dismissing two appeals, Nos. 07–06191 and 07–06230, as frivolous); *Banks v. Cnty. of Allegheny*, 568 F. Supp. 2d 579, 585 (W.D.

Pa. 2008) (granting motion to dismiss for failure to state a claim); see also *In re Banks*, 450 F. App’x 155, 157 n. 1 (3d Cir. 2011) (noting plaintiff is “a three-strikes litigant.”) Plaintiff was a prisoner proceeding in forma pauperis for each matter, and the appeals and complaint were dismissed for qualifying reasons.

Therefore, I will deny the Motion. An appropriate Order accompanies this Opinion. /s/ Edward S. Kiel
EDWARD S. KIEL UNITED STATES DISTRICT JUDGE Dated: February 6, 2026