

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
ARKANSAS, FORT SMITH DIVISION

Robert Philpott v. Sebastian County Sheriff's Office, et al.

Philpott · No. 2:25-CV-02141-DCF · Decided May 7, 2026

SUMMARY

The United States District Court for the Western District of Arkansas adopted a magistrate judge’s Report and Recommendation and overruled Robert Philpott’s objection. The court dismissed the § 1983 action without prejudice because Philpott failed to pay the filing fee after revocation of in forma pauperis status under the Prison Litigation Reform Act’s three-strikes rule, and found his request to remand the matter to state court moot.

CASE DETAILS

COURT	United States District Court for the Western District of Arkansas, Fort Smith Division
WRITING FOR THE COURT	David Clay Fowlkes
JURISDICTION	United States District Court for the Western District of Arkansas, Fort Smith Division
DECIDED	May 7, 2026
DOCKET	2:25-CV-02141-DCF
DISPOSITION	dismissed
PROCEDURAL POSTURE	The district court reviewed a magistrate judge's Report and Recommendation and the plaintiff's objection concerning revocation of in forma pauperis status and failure to pay the filing fee.
STANDARD OF REVIEW	The district court reviewed the Report and Recommendation and Plaintiff's timely objection, conducting careful review before adopting the recommendation in its entirety.
PRECEDENTIAL VALUE	Unpublished federal district court memorandum opinion; precedential status is not identified in the source.

TOPICS

- civil procedure
- section 1983
- prisoners rights

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the plaintiff's failure to pay the filing fee after revocation of in forma pauperis status justified dismissal for failure to comply with a court order and properly prosecute the action.
2. Whether the PLRA's three-strikes provision, 28 U.S.C. § 1915(g), is unconstitutional or permits the action to proceed without payment of the filing fee.
3. Whether the federal court could remand the § 1983 action to state court at the plaintiff's request.

HOLDINGS

1. A plaintiff who has had in forma pauperis status revoked under the PLRA and who fails to pay the required filing fee does not properly prosecute the action and may have the case dismissed without prejudice for failure to comply with a court order.
2. The three-strikes provision does not unconstitutionally deny an indigent prisoner access to court because the prisoner may proceed by paying the full filing fee, and the imminent-danger exception remains available when its requirements are met.
3. The plaintiff's request to remand the § 1983 action to state court was moot because he had already filed suit concerning the matter in state court; in any event, the federal court had original jurisdiction over the § 1983 claim and could not remand it solely because the plaintiff preferred a state forum.

KEY QUOTATIONS

"A pro se litigant is not excused from complying with substantive and procedural law." (Discussion)

"Section 1915(g) applies only to civil actions, and indigent inmates are not denied IFP status for potentially nonfrivolous civil claims unless and until they file three meritless suits." (Discussion)

FACTUAL BACKGROUND

Robert Philpott filed a § 1983 action concerning an alleged sexual assault at the Sebastian County Jail in 1997, when he was fifteen years old. He was initially granted in forma pauperis status, but that status was later revoked after the court determined that the PLRA three-strikes rule applied. Philpott did not pay the required \$405 filing fee and argued that the three-strikes rule was unconstitutional; he alternatively sought remand to state court.

PROCEDURAL HISTORY

Plaintiff filed a § 1983 complaint and was initially granted in forma pauperis status. The court later revoked that status under the Prison Litigation Reform Act's three-strikes provision and ordered Plaintiff to pay the \$405 filing fee. After Plaintiff failed to pay and objected to the Report and Recommendation, the district court adopted the recommendation, overruled the objection, and dismissed the case without prejudice.

DISPOSITION

dismissed

CASES CITED

- *Burgs v. Sissel*, 745 F.2d 526, 528 (8th Cir.)
- *Higgins v. Carpenter*, 258 F.3d 797, 800 (8th Cir.)
- *Ashley v. Dilworth*, 147 F.3d 715, 716-17 (8th Cir.)
- *Williams v. Ragnone*, 147 F.3d 700, 702 (8th Cir.)

OPINION

IN THE UNITED STATES DISTRICT COURT WESTERN DISTRICT OF ARKANSAS FORT SMITH DIVISION ROBERT PHILPOTT PLAINTIFF v. Case No. 2:25-CV-02141-DCF SEBASTIAN COUNTY SHERIFF'S OFFICE, et. al. DEFENDANTS MEMORANDUM OPINION AND ORDER The Court has received a Report and Recommendation (Doc. 26) from Magistrate Judge Mark E. Ford, and Plaintiff timely filed his Objection (Doc.

27). The matter is now ripe for consideration. After careful review, the Court concludes that the Report and Recommendation should be, and hereby is, approved and adopted in all respects and in its entirety as this Court's findings. Plaintiff Robert Philpott, proceeding pro se, has failed to pay his filing fee after his in forma pauperis (IFP) status was revoked based on the "three strikes rule," which states that a prisoner may not obtain IFP status when three of his previous actions were dismissed as frivolous, malicious, or for failing to state a claim.

See 28 U.S.C. § 1915(g). While an exception exists for those in imminent danger of serious physical injury, Plaintiff has not shown that this exception applies in his case. As such, the Magistrate Judge has recommended this case be DISMISSED WITHOUT PREJUDICE.

The Court agrees. I. BACKGROUND Plaintiff filed his complaint on November 3, 2025, seeking relief under 42 U.S.C. § 1983 based on an alleged sexual assault perpetrated against him by the Defendants while he was housed in an adult detention center in Sebastian County Jail when he was 15 years old in 1997. (Doc. 1). While he was granted IFP status that same day (Doc.

3), it was later determined that the three strikes rule applied, and his IFP status was revoked (Doc. 25). Plaintiff was ordered to pay the filing fee of \$405.00 by February 19, 2026, which he did not do. Instead, on March 27, 2026, he filed his Objection to the Magistrate Judge's Report and Recommendations (R and R) in this case. (Doc. 27). Plaintiff argues that his case should proceed despite his failure to pay the filing fee because the three strikes rule that caused his IFP status to be revoked is unconstitutional.

(Doc. 27). Alternatively, Plaintiff requests his case be remanded for adjudication in state court. (Id.). After careful consideration, the Court concludes that Plaintiff's Objection should be, and

hereby is, overruled. II. DISCUSSION A pro se litigant is not excused from complying with substantive and procedural law. *Burgs v. Sissel*, 745 F.2d 526, 528 (8th Cir.

1984). Under Local Rule 5.5(c)(2), pro se litigants are expected to be familiar with and follow the Federal Rules of Civil Procedure, which warn that a case may be dismissed for a plaintiff's failure to prosecute his case or for a failure to comply with court orders. Fed. R. Civ. P. 41(b). Plaintiff essentially insists the Court allow this case to proceed on the merits despite his failure to obey the Court's Order to pay the filing fee and, therefore, properly prosecute this matter.

(Doc. 27). The Court declines to do so. Other than merely mentioning the Eighth Amendment, Plaintiff provides no support for his argument that the three strikes rule and the Prison Litigation Reform Act (PLRA), 28 U.S.C. § 9115(g), are unconstitutional. "Section 1915(g) applies only to civil actions, and indigent inmates are not denied IFP status for potentially nonfrivolous civil claims unless and until they file three meritless suits." *Higgins v. Carpenter*, 258 F.3d 797, 800 (8th Cir.

2001). The indigent inmate risks "being denied IFP status for future nonfrivolous § 1983 actions" when he chooses "to continue filing frivolous, malicious, and meritless suits after receiving notice of dismissals that would count as § 1915(g) strikes." *Id.* Thus, it is the indigent inmate who controls whether the three strikes rule is applied to him. *Id.* In addition, Section 1915 does not close the courthouse doors to frequent filers like Plaintiff because he can still file his suit by paying the full filing fee.

See *Ashley v. Dilworth*, 147 F.3d 715, 716-17 (8th Cir. 1998) (per curium). He chose not to do so here. Because Plaintiff has already filed suit about this matter in state court, his alternative request to remand this case to state court is moot. "Federal district courts have original jurisdiction over Section 1983 claims, notwithstanding the fact that they share jurisdiction with the courts of the state in which they sit." *Williams v. Ragnone*, 147 F.3d 700, 702 (8th Cir.

1998). While this Court lacks discretion to remand a Section 1983 claim based solely on a plaintiff's preference for state court, it does not bar a plaintiff from filing suits in other courts. And Plaintiff appears to have done so here. (Doc. 27). III. CONCLUSION For the foregoing reasons, the Court finds proper the Report and Recommendation (Doc. 26) and overrules Plaintiff's Objection (Doc.

27). As such, the Court ADOPTS IN ITS ENTIRETY the Report and Recommendation of the Magistrate Judge. Accordingly, Plaintiff's case is DISMISSED WITHOUT PREJUDICE. IT IS SO ORDERED this 7th day of May 2026. /s/David Clay Fowlkes DAVID CLAY FOWLKES UNITED STATES DISTRICT JUDGE

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