

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SHAMBA BOLONGOGO, CS-1302 : CIVIL ACTION
: :
v. : :
: :
COMMISSIONER MARTIN HORN, DEPT. OF :
CORRECTIONS; SUPERINTENDENT :
CHESNEY, SCI FRACKVILLE : NO. 97-4378

MEMORANDUM AND ORDER

VanARTSDALEN, S.J.

July 23, 1997

Plaintiff, under the name of Shamba Bolongogo, (formerly Edgar James Flowers) a prisoner in the State Correctional Institution at Frackville, Pennsylvania (Frackville), seeks to file a pro se civil rights complaint against the State Commissioner of Corrections and the Superintendent of Frackville. He alleges a plethora of complaints against the prison and prison officials including inter alia: prison overcrowding, double bunking, placing two inmates per cell, unsanitary conditions in the general prison population cells and in the restricted housing units (R.H.U.), food containing unlabeled, cancerous substances, strip searches, inadequate exercise facilities and law libraries. Plaintiff seeks preliminary and permanent injunctive relief and monetary damages.

Filed with the pleadings is a statement that "my in forma pauperis motion will be forwarded as soon as completed by the accounting office". The complaint was filed July 2, 1997. The in forma pauperis statement filed by the prison authorities indicates that plaintiff had, as of July 2, 1997, a negative balance in his account and that plaintiff's average monthly deposits during the

past six months were \$9.24.

Irrespective of whether the in forma pauperis application would be adequate to permit plaintiff to proceed, plaintiff is precluded from bringing this action under the express mandatory provisions of 28 U.S.C. §1915(g) which provides as follows:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section 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.

A review of the records in the Clerk's Office reveals that the plaintiff has filed at least 3 prior civil actions while a state prisoner, all of which were expressly dismissed because they were either frivolous, malicious or failed to state a claim upon which relief could be granted.

The prior actions were filed under the name Edgar James Flowers. It is clear that the plaintiff in this case, using the assumed name Shamba Bolongogo, is the same individual, Edgar James Flowers. The prison identification number for both Edgar James Flowers and Shamba Bolongogo is CS-1302. The envelope forwarding the present papers contained as a return address "Shamba Bolongogo/Edgar Flowers, CS-1302". The present complaint on the printed form includes plaintiff's prison identification number as

CS-1302. In at least one of the prior actions, civil action number 95-4315, filed under the name Edgar James Flowers, both the forwarding envelope and the pleadings contain the state prison identification number of CS-1302. In addition, in a letter sent to the Clerk of Court dated July 3, 1997, which letter is included in the present file, the plaintiff stated that he had filed or sought to file simultaneously with the filing of this action, another civil action in the Western District of Pennsylvania entitled, Flowers v. United States of America, civil action number 97-898. There is no doubt, therefore, that the present plaintiff under the name Shamba Bolongogo is, in fact, the same person as Edgar James Flowers. Under the name Edgar James Flowers the plaintiff filed inter alia the following civil actions in this Court:

(1) 92-1570 filed March 17, 1992. Dismissed for failure to state a claim on October 13, 1992. Affirmed on appeal by Judgment Order dated June 14, 1993.

(2) 92-1642 filed March 20, 1992. Dismissed as frivolous on April 6, 1992. Not appealed.

(3) 95-4315 filed July 12, 1995. Dismissed as frivolous and malicious on August 8, 1995. Not appealed.

In addition, at least two other civil actions filed in this Court by the plaintiff were dismissed as to some of the parties as frivolous and, as to remaining parties, dismissed on motions for summary judgment. They were:

(1) 92-1109 filed February 24, 1992, summary judgment entered on October 5, 1992. Not appealed.

(2) 93-1212 filed March 9, 1993, summary judgment granted on February 4, 1994. Not appealed.

In civil action number 93-1212 the defendants filed a petition to enjoin plaintiff from filing additional civil actions. Although that motion was denied, defendants established that plaintiff had filed and threatened to continue to file repeated frivolous and/or malicious lawsuits. In a Memorandum and Order dated August 8, 1995, in civil action number 95-4315, I noted that plaintiff had asserted in a pleading filed in civil action number 93-1212 that "Montgomery County is going to get sued, sued, sued" by plaintiff.

The requirements of 28 U.S.C. §1915(g) are mandatory "unless the prisoner is under imminent danger of serious physical injury". Although plaintiff makes allegations of potentially dangerous conditions in the prison, he does not allege any facts that would suggest that he is "under imminent danger of serious physical injury". Consequently, Mr. Flowers, presently assuming the name of Shamba Bolongogo, may not bring this civil action while incarcerated as a state prisoner.

Finally, it should be noted that plaintiff has also apparently used the name Leroy Hadden in approximately five additional pro se prisoner complaints filed in this Court commencing in November, 1980. It is believed that all of those actions were likewise disposed of in favor of defendants prior to trial.

28 U.S.C. § 1915(g) appears to be jurisdictional.

Consequently, this complaint is subject to dismissal for lack of jurisdiction. Also because the statute specifically says that the plaintiff "in no event" may bring this action, it would appear that there is a failure to state a claim upon which relief may be granted.

Consequently, pursuant to 28 U.S.C. §§1915(g) and 1915(A), the complaint will be dismissed for lack of jurisdiction and failure to state a claim upon which relief may be granted.

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O R D E R

For the reasons set forth in the foregoing Memorandum,

civil action number 97-4378 is **DISMISSED** for lack of jurisdiction and failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. §§1915(g) and 1915(A).

BY THE COURT:

July 23, 1997

Donald W. VanArtsdalen, S.J.