

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Submitted January 4, 2024*

Decided January 11, 2024

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 22-2212

TOBIAS PAYTON,
Plaintiff-Appellant,

Appeal from the United States District
Court for the Central District of Illinois.

v.

No. 17-cv-1292-JBM

RYAN KRAM,
Defendant-Appellee.

Joe Billy McDade,
Judge.

ORDER

Tobias Payton, an Illinois prisoner, appeals the judgment dismissing his suit against a correctional officer at Pontiac Correctional Center for incidents related to an

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

alleged staff assault. See 42 U.S. § 1983. The district court dismissed his case with prejudice as a sanction after determining that Payton fraudulently omitted his litigation history from his complaint. We affirm.

In 2017, Payton filed the first of two nearly identical suits in the Central District of Illinois. On a form complaint, he alleged that various correctional officers assaulted him, failed to document his injuries, and locked him in a strip cell for three days under a false disciplinary report. See *Payton v. Kram, et al.*, No. 17-cv-1022 (C.D. Ill., 2017) (“*Payton v. Kram I*”). In response to his request to proceed in forma pauperis, Judge Myerscough directed him to show cause why he should not be assessed the full filing fee, given that he had spent \$2,500 in his prison account immediately before filing the suit. Payton then filed a “motion to withdraw complaint” — which the judge construed as a motion to voluntarily dismiss his complaint — and said that he intended to file a claim in the Illinois Court of Claims.

Three weeks later, Payton filed a new form complaint in the Central District, reprising his claims against the same parties. See *Payton v. Kram*, No. 17-cv-1292, 2022 WL 2713555 (C.D. Ill. June 17, 2022) (“*Payton v. Kram II*”). In the section of the form entitled “Litigation History,” he checked the box confirming that he had not brought any other lawsuit in state or federal court dealing with the same facts. In that same section of the form, he also identified five other lawsuits that he had filed in federal court while incarcerated; he failed, however, to disclose his prior suit, *Payton v. Kram I*.

This case was screened under 28 U.S.C. § 1915A by Judge McDade, who allowed Payton to proceed only on his excessive force claims against two officers, Ryan Kram and Ray Roddick. The judge later granted summary judgment for Roddick (concluding that no reasonable jury could find that he acted with excessive force) but allowed Payton to continue on his excessive force claim against Kram.

Kram then moved for sanctions on grounds that Payton had intentionally withheld information from the court concerning his litigation history — specifically, reference to his prior suit, *Payton v. Kram I*. Kram, who said that he had discovered the omission while preparing for trial, highlighted Payton’s statement in his complaint that he had not filed any other suits dealing with the same facts. Kram argued that Payton had acted in bad faith by trying to defraud the court and that, as a sanction, his action should be dismissed with prejudice.

Judge McDade agreed with Kram and dismissed the case with prejudice. The judge found that Payton had defrauded the court by “intentionally” and “egregiously” omitting from his litigation history any reference to *Payton v. Kram I*.¹ Based on the short timeline between the two suits, the judge suggested that Payton was trying to avoid either paying a separate filing fee or responding to Judge Myerscough’s order to show cause.

On appeal, Payton challenges Judge McDade’s decision to sanction him without Kram’s having submitted any proof that *Payton v. Kram I* had closed. But the judge was entitled to take judicial notice of court records from Payton’s prior proceedings, see *Ennenga v. Starns*, 677 F.3d 766, 774 (7th Cir. 2012), and a text order from the docket of *Payton v. Kram I*, entered on May 31, 2017, expressly states that Judge Myerscough had granted his motion to withdraw (which she construed as a motion to voluntarily dismiss the case) and that “[t]his case is closed.” Judge McDade’s handling of this matter was entirely appropriate. Under the Prison Litigation Reform Act, district courts must ensure that a prisoner has not incurred three strikes, and the Act allows judges to independently review the litigation history of a prisoner seeking to proceed in forma pauperis. See 28 U.S.C. § 1915(g); *Hoskins v. Dart*, 633 F.3d 541, 543 (7th Cir. 2011). Judge McDade justified his findings that Payton’s omission was material, that monetary sanctions would be ineffective against a litigant like Payton who sought to proceed in forma pauperis, and that dismissal with prejudice was a reasonable sanction in these circumstances. See *id.* at 543–44 (upholding court’s dismissal of complaint with prejudice as sanction for prisoner’s fraudulent misrepresentation of his litigation history); see also *Greyer v. Illinois Dep’t. of Corr.*, 933 F.3d 871, 879–82 (7th Cir. 2019).

AFFIRMED

¹ Even if the second case were—as Payton believes—merely a continuation of the earlier one, he was still obligated to inform the court of the prior proceedings. The form Payton completed specifically asked if he had “brought any other lawsuits in state or federal court dealing with the same facts involved in this case.”