No. 18-1290

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

FABIAN GREYER,
Plaintiff-Appellant,

v.

ILLINOIS DEPARTMENT OF CORRECTIONS, et al.,
Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Illinois, Western Division
The Honorable Philip G. Reinhard
Case No. 17-CV-07840

BRIEF AND REQUIRED SHORT APPENDIX OF
PLAINTIFF-APPELLANT FABIAN GREYER

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DISCLOSURE STATEMENT

I, the undersigned counsel for the Plaintiff-Appellant, Fabian Greyer, furnish the following list in compliance with Fed. R. App. P. 26.1 and Cir. R. 26.1:

1. The full name of every party or amicus the attorney represents in the case: Fabian Greyer.

2. Said party is not a corporation.

3. The names of all law firms whose partners or associates are expected to appear for the party before this Court: Sarah O'Rourke Schrup (attorney of record) and Lauren Pope (senior law student) of the Bluhm Legal Clinic at the Northwestern Pritzker School of Law.

4. The names of all law firms whose partners or associates have appeared for the party in the district court and are not expected to appear: N/A

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d): Yes

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JURISDICTIONAL STATEMENT

The United States District Court for the Northern District of Illinois had subject matter jurisdiction over Fabian Greyer's § 1983 suit pursuant to 28 U.S.C. § 1331. The district court entered a final order dismissing Mr. Greyer's case with prejudice on December 19, 2017. (A.6–7.) Mr. Greyer then sent a letter to the district court on January 5, 2018, which the district court interpreted as a Federal Rule of Civil Procedure 59(e) Motion to Amend the Judgment. (A.8.) The district court denied the motion and dismissed Mr. Greyer's complaint with prejudice in a final order on January 11, 2018. (A.9–10.)

Mr. Greyer mailed a timely and notarized notice of appeal to this Court on February 2, 2018. (A.11–12.) *See* FED. R. APP. P. 4(c)(1)(A)(i) (stating that an inmate's notice of appeal is timely if it is deposited in a prison's internal mail system on or before the last day for filing and is accompanied by a notarized statement). The district court filed Mr. Greyer's notice of appeal on February 12, 2018. (A.11.) This Court has jurisdiction to review the district court's dismissal of Mr. Greyer's suit pursuant to 28 U.S.C. § 1291, which grants jurisdiction of "all final decisions of the district courts of the United States" to the courts of appeal.

The district court's dismissal of Mr. Greyer's complaint as a sanction for fraud and the denial of his 59(e) Motion to Amend the Judgment merge into a single appeal. *See Martinez v. City of Chicago*, 499 F.3d 721, 726–27 (7th Cir. 2007) ("[T]he denial of a timely Rule 59(e) motion is not appealable separately from the

judgment that it seeks to alter or amend.") (quoting *Borrero v. City of Chicago,* 456 F.3d 698, 700 (7th Cir. 2006)).

INTRODUCTION

Congress enacted the Prisoner Litigation Reform Act (PLRA) in 1996 to curb the volume of non-meritorious lawsuits filed by prisoners. Under the PLRA, a prisoner cannot bring a suit *in forma pauperis* when a prisoner has had three of his complaints dismissed as frivolous, malicious, or for failure to state a claim. *See* 28 U.S.C. § 1915(g). To aid the courts' enforcement of the PLRA's "three-strike rule," prisoners seeking to proceed *in forma pauperis* must disclose their prior litigation history on a court-provided form attached to the complaint. *Hoskins v. Dart*, 633 F.3d 541, 544 (7th Cir. 2011). If a prisoner fails to disclose his complete litigation history, a court can dismiss the case as a sanction for fraud on the court only if it finds that the omission was both intentional and material. *Hoskins*, 633 F.3d at 543. Here, however, the district court did not mention either intentionality or materiality and did not find any facts showing either element before dismissing Mr. Greyer's suit with prejudice as a sanction for fraud. (A.6–7.)

Mr. Greyer is mentally ill, uneducated, and has an extremely limited capacity to read and write. (A.4.) Because of these limitations, Mr. Greyer asked another inmate to help him draft his complaint and complete the attached forms. (A.4, A.8.) As he explained in his show-cause filing, Mr. Greyer did not understand what had been written for him on the forms. (A.4.) Because he could not understand what the forms required, Mr. Greyer did not disclose his two other lawsuits in the complaint form—a habeas petition filed in 2007 and another suit he filed on the same day—neither of which counted as a PLRA "strike." (A.1.) Although Mr. Greyer explained

that he did not disclose the lawsuits because of his mental illness, limited capacity to read and write, and inability to understand what had been written for him, the district court ignored Mr. Greyer's explanation. The court dismissed the case with prejudice as a sanction for fraud on the court, finding that Mr. Greyer chose not to answer the court's question and stating that "[b]ecause plaintiff has offered no explanation for failing to disclose his prior lawsuits, this court finds that he committed a 'fraud.'" (A.6–7.)

In dismissing Mr. Greyer's case as a sanction for fraud without addressing the intentionality or materiality of the omission and without considering the validity of Mr. Greyer's explanation that the omission was an innocent mistake, the district court transformed the PLRA disclosure requirement into a procedural trap for pro se prisoners. Prisoners often lack ready access to their prior legal records while incarcerated and thus complete the form based on memory alone. Many also lack the educational background needed to understand the form. Given these circumstances, it is likely that prisoners will fail to disclose all their prior lawsuits due to simple inadvertence or mistake. If this Court permits district courts to impose the harshest sanction of dismissal with prejudice without finding that a prisoner's omission was intentional and material, prisoners will be barred from bringing meritorious claims through no fault of their own.

STATEMENT OF THE ISSUES

1. Whether a court errs when it does not address the intentionality or materiality of a pro se prisoner's omission of his prior litigation history, does not find any facts as to either element, and fails to consider the prisoner's explanation in his show-cause filing that the omission was an innocent mistake, yet nevertheless finds that the prisoner committed fraud on the court by failing to disclose his litigation history.

2. Whether a pro se prisoner's failure to disclose two lawsuits in his complaint constitutes fraud on the court when the prisoner did not understand the form due to his limited capacity to read and write, when he could not assess what had been written for him, when neither of the omitted lawsuits counted as a PLRA strike, and when the omitted lawsuits did not contain any duplicative claims.

3. Whether a court abuses its discretion in dismissing a pro se prisoner's case with prejudice as a sanction for fraud on the court when the prisoner failed to disclose his litigation history in the complaint, given that the extreme sanction of dismissal with prejudice is reserved for only the most serious abuses of the judicial process and that the omission was not willful, made in bad faith, or made with fault.

STATEMENT OF THE CASE

Fabian Greyer, an inmate at the Dixon Correctional Center, filed a civil complaint on October 20, 2017, alleging Eighth Amendment violations by the Illinois Department of Corrections, Dixon Correctional Center, and various correctional officers at the Dixon Correctional Center. (R.1.) Among other allegations, Mr. Greyer claimed that a correctional officer at Dixon sexually harassed him. (R.1 at 11.) Because Mr. Greyer is mentally ill, on psychotropic drugs, and has an extremely limited capacity to read and write, Mr. Greyer asked another inmate to assist him in drafting his complaint and filling out the attached forms. (A.4, A.8.) On the form titled "PREVIOUS LAWSUITS," the inmate assisting Mr. Greyer answered "No" to the question, "Have you begun any other lawsuits in state or federal court relating to your imprisonment?" and wrote "N/A" next to the questions that followed. (A.1.)

At the time he filed his complaint, Mr. Greyer had filed only two other lawsuits: (1) *Greyer v. Chandler*, No. 07-CV-2010 (C.D. Ill. Jan. 22. 2007), a petition for habeas corpus filed and denied in 2007; and (2) *Greyer v. Ill. Dep't of Corr.*, No. 17-CV-1133 (S.D. Ill. Oct. 20, 2017), a complaint filed on the same day as the complaint in this case.[1] In the complaint he filed on the same day, Mr. Greyer alleged claims against correctional officers in Graham and Pinckneyville

[1] The district court noted in its order dismissing Mr. Greyer's case that *Greyer v. Ill. Dep't of Corr.* was filed three days before Mr. Greyer filed the complaint in this case. (A.3.) The clerk's timestamp on each complaint, however, shows that Mr. Greyer filed both complaints on October 20, 2017. (R.1; Complaint, *Greyer v. Ill. Dep't of Corr.*, No. 17-CV-01133 (S.D. Ill. Oct. 20, 2017)).

Correctional Centers. (Complaint, *Greyer v. Ill. Dep't of Corr.*, No. 17-CV-01133 (S.D. Ill. Oct. 20, 2017)). The complaint did not include a form requesting information about his prior litigation history.[2] (*Id.*) Other than these two lawsuits, one prior and one contemporaneous, Mr. Greyer had not filed any other lawsuits at the time he filed this complaint and had not accumulated any PLRA strikes.

Along with his complaint, Mr. Greyer also filed a motion to proceed *in forma pauperis* and a motion for recruitment of counsel. (R.2, R.3.) The district court granted Mr. Greyer's motion to proceed *in forma pauperis* but did not issue the summons and instead asked Mr. Greyer to show cause in writing why the court should not summarily dismiss the action for fraud on the court due to Mr. Greyer's failure to disclose his two other lawsuits. (A.3.)

Mr. Greyer responded, explaining that he is mentally ill, on psychotropic drugs, has a limited capacity to read and write, and is unable to assess what has been written for him. (A.4.) Mr. Greyer also stated that he was in dire need of court-appointed counsel. (A.5.) Four days later, the district court summarily dismissed Mr. Greyer's case as a sanction for fraud. (A.6–7.) It found that Mr. Greyer "[chose] not to respond to the court's question" and explained: "[b]ecause plaintiff has offered no explanation for failing to disclose his prior lawsuits, this court finds that he committed a 'fraud.'" (A.6–7.)

[2] It is not clear why the complaint did not include this form, but the district judge granted Mr. Greyer's motion to proceed *in forma pauperis* and the case proceeded. (Order Granting Plaintiff's Motion to Proceed *in Forma Pauperis*, *Greyer v. Ill. Dep't of Corr.*, No. 17-CV-01133 (S.D. Ill. Oct. 20, 2017)).

Mr. Greyer then wrote a letter to the district court, explaining again that he is seriously mentally ill, uneducated, and does not know anything about the law. (A.8.) He stated:

> Dear courts [sic] my name is Fabian Greyer and I do not know nothing about the law as I have been paying inmates to help me . . . I'am [sic] seriously mentally ill and uneducated . . . If I left out some inportant [sic] information it is only because I did not understand. (A.8.)

The district court construed Mr. Greyer's post-judgment letter as a Federal Rule of Civil Procedure 59(e) Motion to Amend the Judgment and denied the motion. (A.9.) In its order, the district court explained that Mr. Greyer's letter reiterated the same "excuses" he provided in his show-cause filing and did not explain why he failed to disclose his two lawsuits. (A.9–10.)

Mr. Greyer sent a timely notice of appeal to this Court. (A.11–12.) The district court denied Mr. Greyer's motion to appeal *in forma pauperis*, finding that Mr. Greyer brought the appeal in bad faith. (R.27.) This Court found that the district court erred in finding bad faith and allowed Mr. Greyer to appeal without paying the filing fee. (A.13–14.)

SUMMARY OF THE ARGUMENT

The district court erred in finding that Mr. Greyer's failure to disclose his complete litigation history constituted fraud on the court because it did not apply the proper legal definition of fraud. As this Court held in *Hoskins*, a prisoner's omission of his prior litigation history is fraudulent if it is both intentional and material. *Hoskins v. Dart*, 633 F.3d 541, 543 (7th Cir. 2011). But here, the district court did not mention either the intentionality or materiality of the omission and did not find any facts showing either element. Not only did the district court fail to find any facts showing intentionality or materiality, it also erred by failing to consider the validity of Mr. Greyer's explanation in his show-cause filing and post-judgment letter that the omission was an innocent mistake. The court ignored Mr. Greyer's reasons for the omission and found that Mr. Greyer chose not to answer the court's question.

Had the district court applied the proper legal standard for fraud and considered Mr. Greyer's reasons for the omission, the court could not have found that the omission constituted fraud on the court. First, Mr. Greyer did not intentionally conceal his two other lawsuits from the court. As Mr. Greyer explained in his show-cause filing and his post-judgment letter, he did not understand the form and could not understand what had been written for him. Furthermore, Mr. Greyer had no incentive to conceal his two lawsuits. Because neither case counted as a PLRA strike or contained duplicative claims, Mr. Greyer did not stand

to gain anything from the non-disclosure. Concealing this information could only hurt him, as it did when the district court dismissed his case with prejudice.

Second, the non-disclosure did not have a material impact on the court. Although this Court has not articulated a standard as to when a prisoner's omission of prior litigation is material, dicta in *Hoskins* suggests that an omitted lawsuit has a material impact on the court if it contains duplicative claims—thus thwarting the court's docket management—or if the omission impacts the court's determination of whether the prisoner is eligible to proceed *in forma pauperis* under the PLRA. Here, neither of Mr. Greyer's two suits contained duplicative claims or counted as a PLRA strike. Thus, Mr. Greyer's failure to include these suits had no material impact on the court.

Given that Mr. Greyer's failure to disclose his litigation history was neither intentional nor material and thus not fraudulent, the district court abused its discretion in dismissing his case as a sanction for fraud on the court. Mr. Greyer's conduct—an innocent mistake due to his limited capacities—did not warrant the extreme sanction of dismissal with prejudice. This Court has repeatedly held that because dismissal with prejudice is an extreme sanction, it is appropriate only when a litigant has willfully abused the judicial process, conducted litigation in bad faith, or demonstrated fault.

ARGUMENT

I. The district court erred in finding that Mr. Greyer's failure to disclose his litigation history constituted fraud on the court because the court did not apply the governing legal standard for fraud and because it failed to consider the validity of Mr. Greyer's explanation that the omission was an innocent mistake.

A. The district court did not apply the proper legal standard for fraud.

This Court reviews the district court's determination of the proper legal standard *de novo*. *United States v. Kokenis*, 662 F.3d 919, 928 (7th Cir. 2011). When a prisoner fails to disclose his prior litigation on the complaint form, the omission constitutes fraud on the court if it is both intentional and material. *Hoskins*, 633 F.3d at 543. For example, this Court has found fraud when a prisoner knows he "struck out" under the PLRA yet does not disclose his three strikes on the complaint form in an effort to deceive the court and proceed without paying the filing fee. *See Ammons v. Gerlinger*, 547 F.3d 724, 725 (7th Cir. 2008) (per curiam); *Sloan v. Lesza*, 181 F.3d 857, 859 (7th Cir. 1999).

Here, however, the district court did not apply this Court's standard for fraud as articulated in *Hoskins*. It did not address either intentionality or materiality and made no factual findings as to either element. *See DeMarco v. United States*, 415 U.S. 449, 450 (1974) (noting that fact-finding is a basic responsibility of district courts, necessary to aid appellate review).[3] The court did not, for example, find facts

[3] This fact-finding duty is especially important when a court makes a finding of fraud. Because an allegation of fraud can result in grave consequences for the accused party, fraud in civil cases cannot be presumed but rather must be proven by a preponderance of the evidence. *Ramirez v. T&H Lemont, Inc.*, 845 F.3d 722, 778–79 (7th Circ. 2016), *cert. denied*, 138 S. Ct 116 (2017); *United States v. Perlman*, 430 F.2d 22, 25 (7th Cir. 1970). The heightened pleading requirement for allegations of common law fraud reflects the care

showing that Mr. Greyer intentionally hid that he had struck out under the PLRA or facts showing that Mr. Greyer sought to gain a benefit from omitting his litigation history. Instead, after briefly citing *Hoskins* and *Sloan*, the district court used its own standard, amounting to a per se rule under which any non-disclosure of prior lawsuits constitutes fraud. (A.7.)

This Court could not have intended for *Hoskins* and *Sloan* to establish a per se rule such that any omission of prior litigation constitutes fraud on the court. Central to this Court's analysis in *Hoskins* was the issue of whether the prisoner-plaintiff acted intentionally in omitting his prior lawsuits. *Hoskins*, 633 F.3d at 543. A per se standard for fraud is at odds with this Court's requirement of intent. It also violates this Court's well-established rule that dismissal as a sanction is appropriate only when a litigant has willfully abused the judicial process, conducted litigation in bad faith, or demonstrated fault. *Ramirez v. T&H Lemont, Inc.*, 845 F.3d 772, 776 (7th Cir. 2016), *cert. denied*, 138 S. Ct. 116 (2017) (affirming dismissal as a sanction for fraud when a plaintiff deliberately attempted to deceive the court by bribing a witness).

B. The district court erred in failing to consider the validity of Mr. Greyer's explanation that the omission was an innocent mistake.

The district court completely ignored the explanation Mr. Greyer gave in his show-cause filing and post-judgment letter as to why the omission was a mistake. In his motion to show cause, Mr. Greyer explained that he did not fill out the form

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courts must employ to weed out baseless claims. *See* FED. R. CIV. P. 9(b) (requiring a heightened pleading standard such that plaintiffs must plead allegations of fraud with particularity).

eliciting his prior litigation history because he is mentally ill, on psychotropic drugs, has a limited capacity to read and write, does not understand the court process, and is unable to assess what has been written for him. (A.4.) The court dismissed the case four days later, finding that Mr. Greyer offered "no explanation" for why he did not disclose his two other suits. (A.7.) Mr. Greyer then wrote a letter to the court again providing the same reasons for why the omission was an innocent mistake. (A.8.) He added: "If I left out some inportant [sic] information it is only because I did not understand." (A.8.)

The sanction of dismissal with prejudice is a "draconian" sanction, one that district courts should employ only in "extreme" situations when a plaintiff deliberately abuses the judicial process. *Long v. Steepro*, 213 F.3d 983, 986 (7th Cir. 2000); *Marrocco v. Gen. Motors Corp.*, 966 F.2d 220, 224 (7th Cir. 1992). Because dismissal with prejudice is such a severe sanction, plaintiffs must be given a meaningful opportunity to be heard before a court dismisses their case with prejudice. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 57 (1991) ("As long as a party receives an appropriate hearing . . . the party may be sanctioned for . . . disobeying the court's orders."); *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) ("The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.") (internal quotations omitted). Not only does this rule comport with the requirements of due process, but it also prevents misunderstandings between the court and the sanctioned party. *Johnson v. Cherry*, 422 F.3d 540, 551 (7th Cir. 2005).

Allowing a litigant to submit an explanation is not enough if the opportunity is a mere gesture. In order for the plaintiff to have a meaningful opportunity to be heard, the court must actually consider the plaintiff's explanation, even if the statements seem self-serving at first glance. *See Sanders v. Melvin*, 873 F.3d 957, 960 (7th Cir. 2017) ("*Everything* a litigant says in support of a claim is self-serving, whether the statement comes in a complaint, an affidavit, a deposition, or a trial. Yet self-serving statements are not necessarily false; they may be put to the test before being accepted, but they cannot be ignored."). The district court does not have to ultimately accept the plaintiff's explanation for why his conduct was not fraudulent, but it cannot brush the statements aside without actually considering them. *See id.* at 961 (stating that if a plaintiff's statements seem "fishy" to a judge, those claims must be supported by "facts presented in affidavits or, if appropriate, hearings."). Pro se litigants' explanations in particular should not be brushed aside, as courts are to construe pro se pleadings liberally. *McCormick v. City of Chicago*, 230 F.3d 319, 325 (7th Cir. 2000).

Here, the district court presumed that Mr. Greyer acted fraudulently without considering the validity of Mr. Greyer's reasons for the omission. The district court did not point to any facts from the record showing that Mr. Greyer's claim of innocence should be rejected. If Mr. Greyer's explanation that he is mentally ill, has a limited capacity to read and write, and cannot assess what had been written for him is not enough to show that his omission was innocent, it is hard to imagine

anything Mr. Greyer could have said to convince the district court that he made an innocent mistake.

II. Had the district court applied the proper legal standard for fraud and considered Mr. Greyer's explanation that the omission was an innocent mistake, it could not have found that Mr. Greyer's failure to disclose his prior litigation constituted fraud on the court.

This Court typically reviews a district court's finding of fraud for clear error. *Hoskins*, 633 F.3d at 543. Here, however, the district court did not apply this Court's legal standard for when a prisoner's omission constitutes fraud, so this Court should review the district court's ruling *de novo*. *See United States v. Kokenis*, 662 F.3d 919, 928 (7th Cir. 2011) (reviewing a district court's application of the proper legal standard *de novo*). *De novo* review is also proper in this case because the district court did not find any facts supporting its conclusion that Mr. Greyer committed a fraud, and thus left no factual findings that require this Court's deference.

Even if this Court were to review to the district court's finding of fraud for clear error, the court's failure to apply the proper legal standard and failure to cite to any evidence showing fraud was clearly erroneous. *See Montano v. City of Chicago*, 535 F.3d 558, 566 (7th Cir. 2008) (holding that a district court's finding of perjury was clearly erroneous when the district court "failed to apply or even identify *any* legal definition of perjury" and did not cite any evidence to support its conclusion that the party's testimony constituted perjury).

If the district court had applied this Court's legal definition of fraud and considered Mr. Greyer's reasons for the omission, it could not have found that

Mr. Greyer acted fraudulently in failing to disclose his two lawsuits. As this Court held in *Hoskins*, to dismiss a prisoner's complaint for fraud on the court when a prisoner omits his prior litigation history, the district court must find that the omission was both intentional and material. *Hoskins*, 633 F.3d at 543. Mr. Greyer, however, did not intentionally omit his two lawsuits from the complaint form. Rather, as he explained in both his show-cause filing and post-judgment letter, he accidentally left out these lawsuits due to his inability to understand what the complaint form required and what had been written for him. (A.4, A.8.) The fact that Mr. Greyer did not stand to gain anything from the non-disclosure further shows that he left this information out by mistake. *Cf. Ammons v. Gerlinger*, 547 F.3d 724, 725 (7th Cir. 2008) (per curiam) (finding fraud where a prisoner tried to proceed *in forma pauperis* despite his ineligibility by concealing his three PLRA strikes); *Sloan v. Lesza*, 181 F.3d 857, 859 (7th Cir. 1999) (same). In fact, failing to disclose his two other suits could only hurt him, as it did when the district court dismissed his complaint with prejudice.

This case is distinguishable from *Hoskins*, where this Court found that a prisoner-plaintiff intentionally omitted his prior litigation history and rejected the plaintiff's claim of innocence. 633 F.3d at 543. In *Hoskins*, the plaintiff filed five § 1983 claims and did not disclose any prior lawsuits on the accompanying forms. *Id.* at 543–44. In the prior year, however, Hoskins had initiated three federal civil rights suits on similar claims and was actively litigating these suits at the time he filed his five new complaints. *Id.* at 542–43. The district court found that Hoskins'

omission could not be attributed to mistake or inadvertence given that Hoskins was actively litigating three recently-filed suits at the time he filed his five complaints. *Hoskins v. Dart*, No. 10 C 0677, 2010 WL 11545927, at *2 (N.D. Ill. Feb. 26, 2010). Unlike Hoskins, Mr. Greyer was not actively litigating multiple recently filed lawsuits when he filed his complaint. In fact, Mr. Greyer did not file *any* lawsuits in the decade prior to filing his complaint. When Mr. Greyer filed the complaint in this case, he had filed only one lawsuit in the past: a 2007 petition for habeas corpus. Although Hoskins could not have reasonably forgotten about the three federal civil rights suits he was actively litigating and had filed within the past year, it is highly likely that Mr. Greyer forgot about a habeas petition he filed 10 years earlier.

As to the suit Mr. Greyer filed on the same day as this case, it is likely that Mr. Greyer omitted the suit due to the form's confusing language. The complaint form eliciting litigation information is titled: "PREVIOUS LAWSUITS" (A.1), which suggests that prisoners do not have to disclose lawsuits they filed on the same day. Even a plaintiff without intellectual limitations could have been confused by this language. Indeed, in *Hoskins*, the plaintiff filed five complaints on the same day, but this Court did not point to these five contemporaneous suits to find intentionality. *Hoskins*, 633 F.3d at 543. Rather, this Court only addressed the three suits Hoskins filed within the prior year when affirming the district court's finding of intentionality. *Id.*

Not only was Mr. Greyer's non-disclosure of his other two lawsuits unintentional, but it also did not materially impact the court. Although this Court

has not articulated a standard as to when a prisoner's omission of prior litigation is material,[4] dicta in *Hoskins* suggests that an omitted lawsuit is material if the prisoner hides duplicative claims—thus thwarting the court's docket management—or if the omission impacts the court's determination of whether the prisoner is eligible to proceed *in forma pauperis* under the PLRA. *See Hoskins*, 633 F.3d at 544 ("[Dismissal as a sanction for fraud] is permissible in a case like this because a district court relies on a party's description of his litigation history to manage its docket. Disclosure of a prisoner's litigation history enables a court to adhere to the three-strike requirement of 28 U.S.C. § 1915(g)."). If the omitted information has no bearing on the court's determination as to whether the prisoner can proceed *in forma pauperis* and does not hinder the court's docket management, the omission does not materially impact the court.

Unlike Hoskins, who failed to disclose three federal civil rights suits stating similar claims when he filed five new complaints, neither of Mr. Greyer's omitted lawsuits involved similar claims. He filed his 2007 habeas petition 10 years before this § 1983 suit. The other complaint Mr. Greyer filed on the same day as the complaint in this case alleged Eighth Amendment violations by correctional officers in Graham and Pinckneyville Correctional Centers, whereas his complaint in this case alleged violations by correctional officers in Dixon. Additionally, neither of the two lawsuits Mr. Greyer failed to disclose counted as a PLRA strike. The dismissal

[4] In *Hoskins*, the facts this Court pointed to in affirming the district court's finding of fraud addressed only the intentionality, not materiality, of the omission. *See Hoskins*, 633 F.3d at 543.

of a petition for habeas corpus does not count as a strike, *Martin v. United States*, 96 F.3d 853, 855 (7th Cir. 1996), and the suit Mr. Greyer filed on the same day he filed this case does not count as a strike because it had not been dismissed. Thus, Mr. Greyer's failure to include these suits had no impact on the court's determination of whether he could proceed *in forma pauperis*.

III. The district court abused its discretion in dismissing Mr. Greyer's case as a sanction for fraud on the court because Mr. Greyer did not act willfully, in bad faith, or with fault when he failed to disclose his two lawsuits.

Because Mr. Greyer did not commit a fraud, the district court abused its discretion in dismissing Mr. Greyer's case as a sanction for fraud. *See Hoskins*, 633 F.3d at 543 (stating that this court reviews a district court's sanction of dismissal with prejudice for abuse of discretion). Mr. Greyer's conduct did not warrant the extreme sanction of dismissal with prejudice. Although a district court has discretion in its choice of sanction, the selected sanction must be proportional to the party's misconduct. *Long*, 213 F.3d at 986. This Court is "particularly vigilant in requiring proportionality where the draconian sanction of dismissal is imposed." *Id.* (internal quotations omitted). Dismissal with prejudice is appropriate only when a litigant has willfully abused the judicial process, conducted litigation in bad faith, or demonstrated fault. *Ramirez*, 845 F.3d at 776 (affirming the use of dismissal as a sanction when a plaintiff engaged in a deliberate attempt to deceive the court by bribing a witness).

Under this Court's standard, "bad faith" requires more than mere negligence; the litigant's conduct must be intentional or reckless. *Trade Well Int'l v. United*

Cent. Bank, 778 F.3d 620, 627 (7th Cir. 2015) (finding that an attorney's actions amounted to carelessness but not "bad faith" when the attorney's poorly worded *lis pendens* led the opposing party to believe that the filing was a Notice of Lien); *see also Secrease v. W.&S. Life Ins. Co.*, 800 F.3d 397, 401 (7th Cir. 2015) (affirming dismissal as a sanction for fraud when a plaintiff added a phony arbitration agreement to his employment contract before submitting it to the court, finding that the plaintiff had attempted, willfully and in bad faith, to deceive the court).

"Fault" requires objectively unreasonable behavior and does not include conduct that is a mere mistake or slight error in judgment. *Compare Long*, 213 F.3d at 986 (finding that a pro se plaintiff's failure to comply with a discovery order was not grounds for dismissal as "fault" because the plaintiff's error was an "innocent misunderstanding and lack of familiarity with the law") *with Marrocco*, 966 F.2d at 224 (finding a defendant to have acted with "fault" when the party "flagrantly disregarded" an assumed duty by improperly packaging evidence before mailing it and failing to notify the plaintiff until months after the evidence was lost in the mail).

Had the district court considered Mr. Greyer's explanation for his non-disclosure, it would have seen that Mr. Greyer did not act willfully, in bad faith, or with fault when he failed to disclose his two lawsuits. Mr. Greyer told the district court that his mental illness, limited ability to read and write, and lack of experience with the law prevented him from understanding the forms. Unlike the litigants in *Ramirez* and *Secrease*, who deliberately intended to deceive the court,

Mr. Greyer did not attempt to advance his own interests or deceive the court by failing to disclose his prior litigation. Indeed, he could not have gained anything from the omission, as neither of his two lawsuits impacted his eligibility to proceed *in forma pauperis* or contained duplicative claims. As for fault, Mr. Greyer's conduct was not a "flagrant disregard" of an "assumed duty," *Marrocco*, 966 F.2d at 224, but rather was caused by an "innocent misunderstanding and a lack of familiarity with the law," *Long*, 213 F.3d at 986.

Far from the calculating, deceitful conduct that typically warrants the harshest sanction available to the court, Mr. Greyer appeared confused, inexperienced, and unaware. The district court should have construed his pleadings liberally, as was required. *See McCormick*, 230 F.3d at 325. Rather than imposing the harshest sanction available, the court could have given Mr. Greyer leave to amend his complaint. At a minimum, it should not have permanently discarded his claims without identifying the gamesmanship and bad faith on which such a dismissal typically rests.

CONCLUSION

Because Mr. Greyer's failure to disclose his prior litigation history was not fraudulent and because the district court therefore abused its discretion in dismissing the case as a sanction for fraud, this Court should reverse and remand for reinstatement of Mr. Greyer's case. *See Montano v. City of Chicago*, 535 F.3d 558, 571 (7th Cir. 2008).

Respectfully Submitted,

Fabian Greyer
Plaintiff-Appellant

By: /s/ SARAH O'ROURKE SCHRUP
Attorney
LAUREN K. POPE
Senior Law Student

Bluhm Legal Clinic
Northwestern Pritzker School of Law
375 East Chicago Avenue
Chicago, Illinois 60611
Phone: (312) 503-0063

Counsel for Plaintiff-Appellant,
FABIAN GREYER

Dated: November 20, 2018

CERTIFICATE OF COMPLIANCE WITH FEDERAL RULE OF APPELLATE PROCEDURE 32(a)(7)

1. This brief complies with the type volume limitations of FED. R. APP. P. 32(a)(7)(B) because the brief contains 5,479 words, excluding the parts of the brief exempted by FED. R. APP. P. 32(f).

2. This brief complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and the type style requirements of FED. R. APP. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 365 in 12-point Century Schoolbook font with footnotes in 11-point Century Schoolbook font.

/s/ SARAH O'ROURKE SCHRUP
Attorney
LAUREN K. POPE
Senior Law Student

Bluhm Legal Clinic
Northwestern Pritzker School of Law
375 East Chicago Avenue
Chicago, Illinois 60611
Phone: (312) 503-0063

Counsel for Plaintiff-Appellant,
FABIAN GREYER

Dated: November 20, 2018

CERTIFICATE OF SERVICE

I, the undersigned, counsel for the Plaintiff, Fabian Greyer, hereby certify that I electronically filed this brief and appendices with the clerk of the Seventh Circuit Court of Appeals on November 20, 2018, which will send notice of the filing to counsel of record in the case.

____

/s/ SARAH O'ROURKE SCHRUP
Attorney
LAUREN K. POPE
Senior Law Student

BLUHM LEGAL CLINIC
Northwestern Pritzker School of Law
375 East Chicago Avenue
Chicago, Illinois 60611
Phone: (312) 503-0063

Counsel for Plaintiff-Appellant
FABIAN GREYER

Dated: November 20, 2018

CIRCUIT RULE 30(d) STATEMENT

I, the undersigned, counsel for Plaintiff-Appellant, Fabian Greyer, hereby state that all of the materials required by Circuit Rules 30(a) and 30(b) are included in the Appendix to this brief.

/s/ SARAH O'ROURKE SCHRUP
Attorney
LAUREN K. POPE
Senior Law Student

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Northwestern Pritzker School of Law
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Chicago, Illinois 60611
Phone: (312) 503-0063

Counsel for Plaintiff-Appellant,
FABIAN GREYER

Dated: November 20, 2018

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II. PREVIOUS LAWSUITS

A. Have you begun any other lawsuits in state or federal court relating to your imprisonment? ☐ Yes ☑ No

B. If your answer to "A" is YES, describe each lawsuit in the space below. If there is more than one lawsuit, you must describe the additional lawsuits on another sheet of paper using the same outline. Failure to comply with this provision may result in summary denial of your complaint.

1. Parties to previous lawsuits:
   Plaintiff(s): N/A

   Defendant(s): N/A

2. Court (if federal court, name of the district; if state court, name of the county):

3. Docket number: N/A

4. Name of Judge to whom case was assigned: N/A

5. Type of case (for example: Was it a habeas corpus or civil rights action?): N/A

6. Disposition of case (for example: Was the case dismissed? Was it appealed? Is it still pending?): N/A

7. Approximate date of filing lawsuit: N/A

8. Approximate date of disposition: N/A

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS WESTERN DIVISION

Fabian Greyer (#R-09438),	)	
	)	
Plaintiff,	)	Case No. 17 CV 7840
	)	
v.	)	
	)	Judge Philip G. Reinhard
Illinois Dep't of Corrections, et al.,	)	
	)	
Defendants.	)	

ORDER

Plaintiff's application for leave to proceed *in forma pauperis* [2] is granted. The court authorizes and orders the trust fund officer at plaintiff's place of incarceration to deduct $8.50 from plaintiff's account for payment to the Clerk of Court as an initial partial payment of the filing fee, and to continue making monthly deductions in accordance with this order. However, summonses shall not issue at this time. The court orders plaintiff to show good cause in writing why the court should not summarily dismiss this action on preliminary review in light of plaintiff's failure to disclose his prior litigation. Failure to show cause by December 31, 2017, will result in summary dismissal of this case for "fraud." The court at this time defers ruling on plaintiff's motion for attorney representation [3].

STATEMENT

Plaintiff Fabian Greyer, an Illinois state prisoner, has brought this *pro se* civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff claims that defendants, various correctional officers at the Dixon Correctional Center, have violated plaintiff's constitutional rights by (1) harassing and retaliating against him for his grievances; (2) fondling and sexually harassing him; and (3) denying him placement in protective custody. Currently before the court are plaintiff's application to proceed *in forma pauperis*, as well as his complaint for initial review under 28 U.S.C. § 1915A.

Plaintiff has demonstrated that he is unable to prepay the filing fee. Accordingly, his application for leave to proceed *in forma pauperis* is granted. Pursuant to 28 U.S.C. §§ 1915(b)(1) and (2), the court orders: (1) plaintiff to immediately pay (and the facility having custody of him to automatically remit) $8.50 to the Clerk of Court for payment of the initial partial filing fee and (2) plaintiff to pay (and the facility having custody of him to automatically remit) to the Clerk of Court twenty percent of the money he receives for each calendar month during which he receives $10.00 or more, until the $350 filing fee is paid in full. The court directs the Clerk of Court to ensure that a copy of this order is mailed to each facility where plaintiff is housed until the filing fee has been paid in full. All payments shall be sent to the Clerk of Court, United States

District Court, 219 South Dearborn Street, Chicago, Illinois 60604, attn: Cashier's Desk, 20th Floor, and shall clearly identify plaintiff's name and the case number assigned to this case.

However, the court on its own motion orders plaintiff to show good cause in writing why the complaint should not be dismissed for "fraud" on the court. The complaint form plaintiff used asked, "Have you begun any other lawsuits in state or federal court relating to your imprisonment?" (R. 1, Complaint, p. 13.) Plaintiff checked "No." He also wrote "N/A" throughout the rest of the section, where litigation history is elicited.

Plaintiff failed to disclose at least two prior actions. *See Greyer v. Chandler*, Case No. 07 CV 2010 (C.D. Ill.); and *Greyer v. Ill. Dep't of Corr.*, Case No. 17 CV 1133 (S.D. Ill.). "Fraud" on the court justifies "immediate termination of the suit." *Sloan v. Lesza*, 181 F.3d 857, 859 (7th Cir. 1999). The U.S. Court of Appeals for the Seventh Circuit has affirmed dismissal for failure of an inmate plaintiff to divulge his litigation history. *See Hoskins v. Dart*, 633 F.3d 541, 543-44 (7th Cir. 2011).

For the foregoing reasons, the court grants plaintiff's application for leave to proceed *in forma pauperis* [2], but orders plaintiff to show good cause in writing why the court should not summarily dismiss his complaint on initial review for failure to fully disclose his prior litigation. Failure to show cause by the above deadline will result in summary dismissal of this case, with prejudice.

11/30/2017 ENTER:

United States District Court Judge

Docketing to Mail Notices. (LC)

FILED
DEC 15 2017
THOMAS G. BRUTON
CLERK, U.S. DISTRICT COURT

In The United States District Court For the
Northern District of Illinois
Western Division

Fabian Greyer (R09438)	)
Plaintiff	) Case No. 17 CV 7840
V.	)
Illinois Dept. of Corrections, et al.	) Judge Philip G. Reinhard
Defendants	)

Motion To Show Cause

Now comes Plaintiff Fabian Greyer pursuiant to the Courts order, directing the plaintiff to show cause why his complaint should not be dismissed for fraud on the Court and therefore states the following:

1. The plaintiff is currently housed in Dixon Special Treatment Center. He is and has been through out his entire incarceration been diagnoised as Severly Mentally Ill. He is and has been on numerous psycotraphic drugs.

2. Plaintiffs capacity to read and write is extreamly limited.

3. Plaintiff has been thus far able to Petition the Court by bartering his food and whatever monies he recieves

4. Plaintiff does not understand the Court process. nor is he able to properly asses what has been written for him.

5. Plaintiff knows he has been mistreated and

Places himself at the Mercy of the Court for his short comings.

6. Plaintiff is in dire need of Court appointed Counsel to pursue his claim

Wherefore, the Petitioner preys that the Court will not summarily dismiss his claim on preliminary review in light of the facts set forth in this motion.

Respectfully,
Fabian Greyer

Fabian Greyer R09438
Dixon Corr. Center STC
2600 N. Brinton Ave.
Dixon, IL. 61021

Dated: 12-10-17

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

Fabian Greyer (#R-09438),	)	
	)	
Plaintiff,	)	Case No. 17 CV 7840
	)	
v.	)	
	)	Judge Philip G. Reinhard
Illinois Dep't of Corrections, et al.,	)	
	)	
Defendants.	)	

ORDER

Having considered plaintiff's "motion to show cause," the court summarily dismisses the complaint on initial review for "fraud" based on plaintiff's misrepresentation of his lack of prior litigation. The case is terminated. Plaintiff's motion for attorney representation [3] is denied as moot.

STATEMENT

Plaintiff Fabian Greyer, an Illinois state prisoner, has brought this *pro se* civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff claims that defendants, various correctional officers at the Dixon Correctional Center, have violated plaintiff's constitutional rights by (1) harassing and retaliating against him for his grievances; (2) fondling and sexually harassing him; and (3) denying him placement in protective custody.

By order of November 30, 2017, the court granted plaintiff's application for leave to proceed *in forma pauperis*, but ordered him to show good cause in writing why his complaint should not be summarily dismissed on initial review for "fraud" on the court [12].

As discussed in the court's show cause order, plaintiff has misrepresented his litigation history "fraud" on the court justifies "immediate termination of the suit." *Sloan v. Lesza*, 181 F.3d 857, 859 (7th Cir. 1999). The U.S. Court of Appeals for the Seventh Circuit has affirmed dismissal for failure of an inmate plaintiff to divulge his litigation history. *See Hoskins v. Dart*, 633 F.3d 541, 543-44 (7th Cir. 2011).

In the case at bar, the complaint form plaintiff used asked, "Have you begun any other lawsuits in state or federal court relating to your imprisonment?" [1, p. 13.] Plaintiff checked "No." He also wrote "N/A" throughout the rest of the section, where litigation history is elicited. Plaintiff failed to disclose at least two prior actions. *See Greyer v. Chandler*, Case No. 07 CV 2010 (C.D. Ill.); and *Greyer v. Ill. Dep't of Corr.*, Case No. 17 CV 1133 (S.D. Ill.). One of those cases was filed within three days of the instant suit.

This court's inquiry in its show cause order [12] (asking why petitioner's complaint should not be summarily dismissed for "fraud") was a straightforward question requiring a simple answer. Plaintiff has chosen not to respond to the court's question. Rather, plaintiff asserts that he has a viable claim, and he requests the assistance of an attorney to help him litigate this matter due to his professed mental illness and limited ability to read and write.1

---

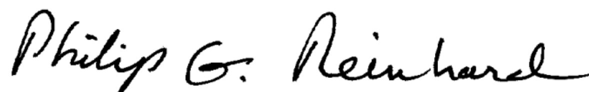
1 While the court recognizes the recent opinion of *Sanders v. Melvin, et al.*, 873 F.3d 957 (7th Cir. 2017),

Because plaintiff has offered no explanation for failing to disclose his prior lawsuits, the court finds that he committed a "fraud." After considering other inadequate sanctions (*see Rivera v. Drake*, 767 F.3d 685, 686-87 (7th Cir. 2014)), the court summarily dismisses the complaint on preliminary review due to plaintiff's failure to divulge his prior litigation. The case is terminated. In view of dismissal on fraud grounds, the court has no occasion to make a determination as to whether this lawsuit is legally and factually frivolous, as those standards are discussed in *Denton v. Hernandez*, 504 U.S. 25, 32 (1992), and *Lee v. Clinton*, 209 F.3d 1025, 1026 (7th Cir. 2000); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009); *Edwards v. Snyder*, 478 F.3d 827, 829 (7th Cir. 2007).

The court directs the Clerk to enter final judgment. If plaintiff wishes to appeal, he must file a notice of appeal with this court within thirty days of the entry of judgment. *See* Fed. R. App. P. 4(a)(1). If plaintiff appeals, he will be liable for the $505.00 appellate filing fee regardless of the appeal's outcome. *See Evans v. Ill. Dep't of Corr.*, 150 F.3d 810, 812 (7th Cir. 1998); *Bentz v. Palmer*, No. 12 C 1753, 2015 WL 1042932, at *5 (N.D. Ill. Mar. 5, 2015). If the appeal is found to be non-meritorious, plaintiff could be assessed another "strike" under 28 U.S.C. § 1915(g). If a prisoner accumulates three "strikes" because three federal cases or appeals have been dismissed as frivolous or malicious, or for failure to state a claim, the prisoner may not file suit in federal court without pre-paying the filing fee unless he or she is in imminent danger of serious physical injury. *Ibid.* If plaintiff seeks leave to proceed *in forma pauperis* on appeal, he must file a motion for leave to proceed *in forma pauperis* in this court. *See* Fed. R. App. P. 24(a)(1).

Plaintiff need not bring a motion to reconsider this court's ruling to preserve his appellate rights. However, if plaintiff wishes the Court to reconsider its judgment, he may file a motion under Federal Rule of Civil Procedure 59(e) or 60(b). Any Rule 59(e) motion must be filed within 28 days of the entry of this judgment. *See* Fed. R. Civ. P. 59(e). The time to file a motion pursuant to Rule 59(e) cannot be extended. *See* Fed. R. Civ. P. 6(b)(2). A timely Rule 59(e) motion suspends the deadline for filing an appeal until the Rule 59(e) motion is ruled upon. *See* Fed. R. App. P. 4(a)(4)(A)(iv). Any Rule 60(b) motion must be filed within a reasonable time and, if seeking relief under Rule 60(b)(1), (2), or (3), must be filed no more than one year after entry of the judgment or order. *See* Fed. R. Civ. P. 60(c)(1). The time to file a Rule 60(b) motion cannot be extended. *See* Fed. R. Civ. P. 6(b)(2). A Rule 60(b) motion suspends the deadline for filing an appeal until the Rule 60(b) motion is ruled upon only if the motion is filed within 28 days of the entry of judgment. *See* Fed. R. App. P. 4(a)(4)(A)(vi).

Date: 12/19/2017 ENTER:



United States District Court Judge

Notices mailed by Judicial Staff. (LC)

Sanders is distinguishable. In *Sanders*, a mentally ill prisoner was seeking to proceed *in forma pauperis*, despite his three previous frivolous lawsuits. Here, the court has simply asked petitioner to respond to a direct question.

17-7840

Dear Courts My Name is Fabian Greyer And I do Not Know Nothing About the Law As I have been paying Inmates to help me by Giving them Food trays And Commissary I Really Do Not Know Anything About Law And I'Am seriously Mentally ILL And unEducated And Was told by other Inmates that My Rights were being violated By I.D.O.C So IF I Left out Some Inportant Infomation It is only because I did Not understand.

Truthfully yours

Fabian Greyer

FILED

JAN 5 2018

THOMAS G. BRUTON
CLERK, U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS WESTERN DIVISION

Fabian Greyer (#R-09438),	)	
	)	
Plaintiff,	)	Case No. 17 CV 7840
	)	
v.	)	
	)	Judge Philip G. Reinhard
Illinois Dep't of Corrections, et al.,	)	
	)	
Defendants.	)	

ORDER

To the extent that plaintiff's letter [16] can be construed as a motion to alter or amend judgment pursuant to FED. R. CIV. P. 59(e), the motion is denied. The case remains closed.

STATEMENT

Plaintiff Fabian Greyer, an Illinois state prisoner, brought this *pro se* civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff claimed that defendants, various correctional officers at the Dixon Correctional Center, were violating plaintiff's constitutional rights by (1) harassing and retaliating against him for his grievances; (2) fondling and sexually harassing him; and (3) denying him placement in protective custody.

By order of November 30, 2017, the court granted plaintiff's application for leave to proceed *in forma pauperis*, but ordered him to show good cause in writing why his complaint should not be summarily dismissed on initial review for "fraud" on the court. After considering plaintiff's response, on December 19, 2017, the court summarily dismissed the case in light of plaintiff's misrepresentation concerning his prior litigation history [14].

On January 5, 2018, the court received plaintiff's undated letter once again pleading ignorance. As the document was filed within 28 days of entry of judgment, the court will treat the letter as a motion to alter or amend judgment pursuant to FED. R. CIV. P. 59(e). The court denies the motion.

To be entitled to relief under Rule 59(e), the movant must "clearly establish[ ] a manifest error of law or fact" or point to newly discovered evidence. *Burritt v. Ditlefsen*, 807 F.3d 239, 253 (7th Cir. 2015). A manifest error "is not demonstrated by the disappointment of the losing party. It is the wholesale disregard, misapplication, or failure to recognize controlling precedent." *Oto v. Metropolitan Life Ins. Co.*, 224 F.3d 601, 606 (7th Cir. 2000) (citation and quotation marks omitted). Moreover, a Rule 59(e) motion "is not an appropriate forum for rehashing previously

rejected arguments." *Caisse Nationale de Credit Agricole v. CBI Indus., Inc.*, 90 F.3d 1264, 1270 (7th Cir. 1996).

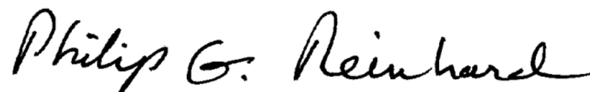
Here, plaintiff reiterates the same excuses he made in response to the show cause order: he relied on other inmates to help him, he is uneducated, he has little legal experience, and he suffers from mental illness. But plaintiff still has not explained why he failed to disclose his prior lawsuits. Accordingly, the court remains satisfied that plaintiff committed a "fraud."

In sum, plaintiff's letter provides no basis for the court to revisit its prior ruling. Consequently, plaintiff's implicit request for reconsideration is denied. The case remains closed. In the future, plaintiff should review all court submissions before filing to ensure that they are wholly accurate and complete.

Again, in view of dismissal on fraud grounds, the court has no occasion to make a determination as to whether this lawsuit is legally and factually frivolous, as those standards are discussed in *Denton v. Hernandez*, 504 U.S. 25, 32 (1992), and *Lee v. Clinton*, 209 F.3d 1025, 1026 (7th Cir. 2000); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009); *Edwards v. Snyder*, 478 F.3d 827, 829 (7th Cir. 2007).

Date: 1/11/2018

ENTER:



United States District Court Judge

Notices mailed by Judicial Staff. (LC)

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

Fabian Greyer (#R-09438),
Petitioner.

vs.

NOTICE OF APPEAL
CASE NO. 17 CV 7840

Illinois Dept of Correction, et al
Respondent

NOTICE OF APPEAL

Notice is hereby given that Petitioner, Fabian Greyer above named, appeals to the United States Court of Appeals for the 7th Circuit from the U.S. District Court Northern Dist., Western Division

(attach extra page if necessary)

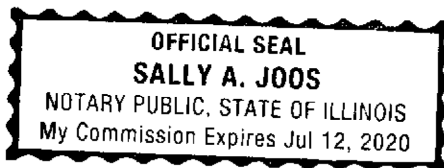
entered in this action on January 11, 2018

Respectfully submitted,

/s/ Fabian Greyer

Subscribed and Sworn To Before Me
This 2nd Day of Feb., ~~19~~ 2018

Sally A Joos
NOTARY PUBLIC



FILED
FEB 12 2018
THOMAS G. BRUTON
CLERK, U.S. DISTRICT COURT

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS.

Fabian Greyer (#R09438)
Plaintiff,

v.) Case No. 17 CV 7840

Illinois Dep't of Corrections, et al.
Defendant

PROOF/CERTIFICATE OF SERVICE

TO: Lisa M. Madigan
Attorney General
100 W. Randolph St. 12th Fl
Chicago, Il 60601

TO: ______

PLEASE TAKE NOTICE that on February 2, 2018, I have placed the documents listed below in the institutional mail at Dixon Correctional Center, properly addressed to the parties listed above for mailing through the United States Postal Service: Notice of Appeal to the U.S. District Court.

Pursuant to 28 USC 1746, 18 USC 1621 or 735 ILCS 5/1-109, I declare, under penalty of perjury, that I am a named party in the above action, that I have read the above documents, and that the information contained therein is true and correct to the best of my knowledge.

DATE: 2/2/18

/s/ Fabian Greyer
NAME: FABIAN GREYER
IDOC#: R09438
DIXON Correctional Center
P.O. BOX 1200, 2600 N. BRINTON AVE
DIXON, IL 61021

Revised Jan 2002

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

ORDER

May 14, 2018

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

No. 18-1290	FABIAN GREYER, Plaintiff - Appellant v. ILLINOIS DEPARTMENT OF CORRECTIONS, et al., Defendants - Appellees
Originating Case Information:	
District Court No: 1:17-cv-07840 Northern District of Illinois, Western Division District Judge Philip G. Reinhard	

The following are before the court:

1. **MOTION FOR LEAVE TO APPEAL IN FORMA PAUPERIS**, filed on April 11, 2018, by pro se Appellant.

2. **MEMORANDUM IN SUPPORT OF PLRA MOTION FOR LEAVE TO PROCEED ON APPEAL IN FORMA PAUPERIS**, filed on April 27, 2018, by pro se Appellant.

Upon consideration of the request for leave to proceed as a pauper on appeal, the appellant's motion filed under Federal Rule of Appellate Procedure 24, the district court's order pursuant to 28 U.S.C. § 1915(a)(3) certifying that the appeal was filed in

bad faith, and the record on appeal, this court has determined that the district court erred in its bad-faith determination. Appellant may be able to raise a non-frivolous argument that the district court erred in dismissing the case as a sanction for fraud when he failed to list his full litigation history in the complaint. Accordingly,

IT IS ORDERED that the motion for leave to proceed on appeal in forma pauperis is **GRANTED**. The district court is instructed to assess an initial partial filing fee for the appeal and to notify this court when the partial fee has been collected.

IT IS FURTHER ORDERED that counsel will be recruited to represent the appellant. After the initial partial filing fee has been collected, counsel will be named and a briefing schedule will be set by separate court order.

form name: **c7_Order_3J**(form ID: **177**)