

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-14467
Non-Argument Calendar

KELVIN STEPHENS,

Plaintiff-Appellant,

versus

FULTON COUNTY JAIL,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:25-cv-03047-MHC

Before JILL PRYOR, BRANCH, and LAGOA, Circuit Judges.

PER CURIAM:

Kelvin Stephens, proceeding *pro se*, appeals the district court's order dismissing his amended civil rights complaint for failing to pay the filing fee. The district court denied his motion to

proceed *in forma pauperis* (“IFP”) under 28 U.S.C. § 1915(g)—the three-strikes provision of the Prison Litigation Reform Act (“PLRA”). On appeal, Stephens does not challenge the district court’s application of § 1915(g) but instead reiterates many of the underlying factual allegations from his amended complaint alleging that the Fulton County Jail violated his constitutional rights.

After careful review of the record, we affirm the district court’s dismissal order.¹

I. FACTUAL AND PROCEDURAL BACKGROUND

Stephens was arrested and ultimately incarcerated at the Fulton County Jail in May 2025.² While in custody, Stephens filed a handwritten document with the district court alleging, among other things, that he was illegally incarcerated, that jail officials

¹ On appeal, Stephens also filed a “Motion for Summary Judgment” reiterating the alleged constitutional violations and arguing that the Fulton County Jail is in default for not filing an answer brief. We DENY that motion because summary judgment motions are properly reserved to the district courts, not this Court. In addition, we do not resolve appeals by default, *see* Fed. R. App. P. 31(c); 11th Cir. R. 42-2(f).

We also DENY as moot the following motions: (1) motion to amend (ECF 31), (2) motion to amend and motion to add as an exhibit the video (ECF 32), and (3) amend motion to file brief (ECF 33).

² The operative amended complaint does not specify the dates of his incarceration. In a later filing objecting to the magistrate judge’s report and recommendation, Stephens says he was incarcerated on May 5, 2025, and released on May 27, 2025.

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would not allow him to be treated at a nearby hospital despite experiencing elevated blood pressure, and that the jail was unsanitary, with bed bugs, roaches, and ants. Stephens then filed a change of address with the district court indicating that he had been released from confinement.

The magistrate judge construed Stephens's filings as a *pro se* civil rights complaint under 42 U.S.C. § 1983 and ordered the clerk to send Stephens a proper § 1983 complaint form. The magistrate judge also instructed Stephens to either pay the filing fee or move to proceed IFP.

Following those instructions, Stephens filed an amended complaint against the Fulton County Jail and Sheriff Patrick Labat. He alleged that they violated his right to be free by subjecting him to an illegal sentence, denied him access to the courts and an attorney, and failed to provide him with medical attention at a nearby hospital. And he moved to proceed IFP as a non-prisoner.

The magistrate judge granted Stephens's IFP motion because he was indigent and no longer confined. But after screening the amended complaint under 28 U.S.C. § 1915A, the magistrate judge recommended dismissing it as frivolous and for failing to state a claim.

The district court, however, disagreed with the magistrate judge's IFP assessment. It found that Stephens's release from jail did not affect his status as a prisoner under the PLRA, meaning Stephens was subject to § 1915(g)'s three-strikes provision. After determining that Stephens incurred three strikes before filing suit and

rejecting § 1915(g)'s imminent-danger exception, the district court denied the IFP motion. And because Stephens did not pay the filing fee at the time he filed suit, the district court dismissed the action without prejudice.

Stephens timely appealed. In his notice of appeal, Stephens briefly states that § 1915(g) does not apply to him because “there are probably a lot of Kelvin Stephens in the system.” And he contends one of his prior cases that the district court counted as a strike “does not have anything to do” with his current lawsuit and that he “filed [the prior] case at home.” He then filed an amended notice of appeal, briefly asserting, among other things, that the magistrate judge correctly granted him IFP status because he had been released from custody by the time he filed his amended complaint.

But Stephens did not include any of those arguments in his initial brief. Instead, he argued about the underlying merits of his lawsuit.

II. STANDARD OF REVIEW

“We review *de novo* a district court’s interpretation of 28 U.S.C. § 1915(g).” *Maldonado v. Baker Cnty. Sheriff’s Off.*, 23 F.4th 1299, 1303 (11th Cir. 2022). Where, as here, a party proceeds *pro se*, we liberally construe the pleadings. *Gilmore v. Hodges*, 738 F.3d 266, 281 (11th Cir. 2013). Yet liberal construction “does not give a court license to serve as *de facto* counsel for a party, or to rewrite an otherwise deficient pleading in order to sustain an action.” *Campbell v. Air Jam. Ltd.*, 760 F.3d 1165, 1168–69 (11th Cir. 2014) (citation omitted). A *pro se* appellant abandons a claim when he

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fails to raise it in his opening brief. *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008) (per curiam).

III. ANALYSIS

In his initial brief on appeal, Stephens argues the merits of his lawsuit—that he served an illegal sentence and that the Fulton County Jail violated his constitutional rights. But the district court never reached the merits of his lawsuit because, after finding that Stephens was a three-striker and denying his IFP motion, the district court dismissed the amended complaint based on Stephens not paying the filing fee.

The PLRA allows indigent prisoners to proceed IFP by bringing a civil action without prepaying the filing fee. 28 U.S.C. § 1915(a)(2), (b). But § 1915(g) withdraws that privilege if a prisoner has filed three or more meritless actions, unless he is under “imminent danger of serious physical injury.” “This provision is commonly known as the ‘three strikes’ provision.” *Mitchell v. Nobles*, 873 F.3d 869, 872 (11th Cir. 2017). When § 1915(g) bars a prisoner from proceeding IFP, he must “pay the full filing fee at the time he *initiates* suit.” *Dupree v. Palmer*, 284 F.3d 1234, 1236 (11th Cir. 2002) (per curiam). If he fails to do so, the district court should dismiss the complaint without prejudice. *Id.*

Here, although Stephens raised certain arguments about § 1915(g) in his notices of appeal, his initial brief does not dispute the district court’s determination that he is a prisoner under

§ 1915(g) or that he is a three-striker.³ He instead argues the merits of his dismissed complaint. We thus conclude that Stephens has abandoned any argument regarding whether the district court correctly applied § 1915(g) because he failed to “plainly and prominently raise” the issue in his initial brief. *Sapuppo v. Allstate Floridian Ins.*, 739 F.3d 678, 681 (11th Cir. 2014) (citation and internal quotation marks omitted); *see also Timson*, 518 F.3d at 874 (“While we read briefs filed by *pro se* litigants liberally, issues not briefed on appeal by a *pro se* litigant are deemed abandoned[.]” (internal citations omitted)).

Even liberally construing Stephens’s statement in his initial brief that “his life was in danger” from unsanitary conditions such as feces and prior violence at the jail as a challenge to the district court’s rejection of § 1915(g)’s imminent-danger exception, his argument fails. Because Stephens’s single sentence on appeal about “liv[ing] in feces” was not presented to the district court, that issue cannot be raised on appeal. *See Walker v. Jones*, 10 F.3d 1569, 1572 (11th Cir. 1994). Moreover, Stephens’s “[g]eneral assertions” of danger are “insufficient to invoke the exception to § 1915(g) absent specific fact allegations of ongoing serious physical injury, or of a

³ The district court identified the following three cases as strikes under § 1915(g): (1) *Stephens v. Jackson*, No. 1:15-cv-0095-AT (N.D. Ga. Jan. 9, 2015); (2) *Stephens v. Mason*, No. 1:15-cv-3662-AT (N.D. Ga. Oct. 15, 2015); and (3) *Stephens v. Unknown*, No. 1:19-cv-5595-AT (N.D. Ga. Dec. 11, 2019). In his initial brief, Stephens does not mention any of these cases, let alone argue that § 1915(g) does not apply to him.

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pattern of misconduct evidencing the likelihood of imminent serious physical injury.” *Daker v. Ward*, 999 F.3d 1300, 1311 (11th Cir. 2021) (quoting *Brown v. Johnson*, 387 F.3d 1344, 1350 (11th Cir. 2004)).

Because Stephens failed to argue in his initial brief that § 1915(g) did not apply to him, he was required to pay the filing fee when he filed suit. Since he did not do so, the district court properly dismissed his amended complaint without prejudice. *Dupree*, 284 F.3d at 1236.

IV. CONCLUSION

For the reasons discussed above, we affirm the district court’s order dismissing Stephens’s amended complaint without prejudice.

AFFIRMED.