

Winston Team Clarifies “Three-Strike” Rule for Prisoner Litigants

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A Winston team secured a ruling in the Seventh Circuit which clarified the “three strike” rule that had previously been incorrectly interpreted to inhibit inmates’ ability to pursue valid civil rights claims.

Our client, an inmate at Menard Correctional Center, had filed a Section 1983 complaint alleging that the warden, a number of guards and other employees at Menard Correctional Center had worked together to punish him for filing grievances and lawsuits about the conditions of his confinement at Menard. The client, who has no ability to pay for the filing fee, also filed an application to proceed *in forma pauperis* (“IFP”) and have the fee waived. Section 1915(g) of Title 28 prohibits a prisoner from proceeding IFP if, on three or more occasions during his imprisonment, he has brought an action dismissed as “frivolous.” The sole statutory exception to this “three strikes” limitation on IFP status is if “the prisoner is under imminent danger of serious physical injury.”

The trial court denied his IFP application after concluding that he had incurred strikes for three earlier lawsuits in which at least one claim in the multiple-count complaints were dismissed. Our team argued on appeal that the dismissal of a mere claim did not count as the dismissal of an action for purposes of the “three strikes” rule -- thus, the earlier lawsuits should not be considered “strikes” because each action included some claims that proceeded to a decision on the merits. The Seventh Circuit agreed with the team’s logic, stating that “the obvious reading of the statute is that a strike is incurred for an action dismissed *in its entirety* on one or more of the three enumerated grounds.”

Importantly, the opinion clarified that because any opposite interpretation contravened the plain language of the Prison Litigation Reform Act, it did not truly reflect the Seventh Circuit’s previous rulings. By re-interpreting prior precedent rather than issuing a new rule, other prisoners who have been denied their rights under a misinterpretation of the three-strikes rule now have a basis to reassert well-founded claims.

The Winston team was led by Gov. Thompson and included Stephanie Dykeman and Matthew Carter. Carter argued the case with the support of several moot sessions by our colleagues.

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