

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSEPH M. WALLS,	§
	§ No. 517, 2012
Plaintiff Below-	§
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
PERRY PHELPS, CASEY PHELPS,	§ in and for New Castle County
and STANLEY BAYNARD,	§ C.A. No. N12M-04-115
	§
Defendants Below-	§
Appellees.	§

Submitted: November 15, 2013

Decided: January 23, 2014

Before **HOLLAND, JACOBS**, and **RIDGELY**, Justices

This 23<sup>rd</sup> day of January 2014, upon consideration of the parties' briefs, their supplemental memoranda, and the record below, it appears to the Court that:

(1) The appellant, Joseph M. Walls, filed this appeal from two orders of the Superior Court. The first decision, dated August 21, 2012, revoked Walls' privilege to file his civil complaint *in forma pauperis* (IFP). The second order, dated October 17, 2012, ultimately dismissed Walls' complaint after he failed to pay the required filing fee. After careful consideration of the parties' respective positions, we find no merit to the

issues Walls raises in this appeal. Accordingly, we affirm the Superior Court's judgment.

(2) The record reflects that Walls is an inmate at the Vaughn Correctional Center. He has been incarcerated since 1986. The appellees are State officials employed by the Department of Correction. On April 27, 2012, Walls filed a civil complaint against the appellees alleging that they had engaged in a conspiracy to violate his constitutional rights. The allegations stemmed from an incident that occurred on March 26, 2010 during which a correctional officer allegedly planted marijuana in Walls' prison cell. Walls sought damages as well as a writ of mandamus compelling the defendants to comply with the law.

(3) The Superior Court initially granted Walls' motion to file his complaint *in forma pauperis*. In the affidavit in support of his motion, Walls was asked to identify each previous action or appeal that he had filed in any State or federal court. Walls identified only prior Superior Court action and the appeal therefrom. The appellees filed a motion to revoke Walls' IFP status under 10 Del. C. § 8804(f) on the ground that Walls, on three or more prior occasions while incarcerated, had filed a civil action or appeal in a Delaware state or federal court that had been dismissed on the grounds that it was frivolous, malicious, or failed to state a claim upon which relief could

be granted.<sup>1</sup> After Walls filed a response, the Superior Court granted the State's motion, finding that Walls had filed at least three prior civil actions that had been dismissed as frivolous or malicious or had failed to state a claim. Walls appeals that ruling.

(4) Walls raises three issues in his opening brief on appeal. First, he contends that, under *Turley v. Gaetz*,<sup>2</sup> he did not have the requisite three prior strikes against him because only one of his prior civil complaints had been dismissed in its entirety for the limited reasons set forth in 10 Del. C. § 8804(f). Walls next asserts that his most recent complaint sought an extraordinary writ and that extraordinary writs are exempt from the three strikes provision of Section 8804(f). Finally, Walls argues that the three strikes rule violates the Delaware Constitution because it restricts his access to the courts, violates precepts of due process and equal protection, and

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<sup>1</sup> See DEL. CODE ANN. tit. 10, § 8804(f) (2013). Section 8804(f), which is commonly referred to as the “three strikes” rule, provides:

(f) In no event shall a prisoner file a complaint or appeal of a judgment arising from a complaint brought in forma pauperis if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or an appeal in a federal court or constitutional or statutory court of the State that was dismissed on the grounds that it was frivolous, malicious, or failed to state a claim upon which relief may be granted unless the prisoner is under imminent danger of serious physical injury at the time that the complaint is filed. Complaints or appeals therefrom dismissed prior to the enactment of this section shall be counted for purposes of determining the number of previously dismissed proceedings. No petition for a writ of habeas corpus or any appeal from the denial of any such petition shall be dismissed under this subsection.

<sup>2</sup> 625 F.3d 1005, 1008 (7<sup>th</sup> Cir. 2010).

violates the separation of powers doctrine that prohibits the legislature from encroaching upon the jurisdiction of the courts. We address these claims in order.

(5) Walls first argues that the Superior Court erred in revoking his IFP status because he did not have the requisite three strikes against him because he had only one prior action dismissed in its entirety as frivolous or malicious or for failure to state a claim. In support of this argument, Walls cites to *Turley v. Gaetz*, in which the United States Court of Appeals for the Seventh Circuit interpreted 28 U.S.C.A. § 1915(g), the federal counterpart to Delaware’s “three strikes” rule. The *Turley* court held that partial dismissal of a complaint for failure to state a claim did not count as a strike under Section 1915(g) if other claims were allowed to proceed on the merits. In response to Walls’ argument, the State contends that other courts since *Turley* have held that the partial dismissal of a civil complaint for failure to state a claim may be counted as a strike under Section 1915(g).<sup>3</sup>

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<sup>3</sup> See *Thomas v. Parker*, 672 F.3d 1182 (10<sup>th</sup> Cir. 2012) (holding that a mixed disposition, e.g., dismissal of some claims for failure to state a claim and summary judgment on the remaining counts for failure to exhaust administrative remedies, constitutes a strike because no claim was allowed to proceed on the merits). See also *Ball v. Famiglio*, 726 F.3d 448, 460-63 (3d Cir. 2013) (holding that, in cases where an affirmative defense such as failure to exhaust or the statute of limitations or immunity, is apparent on the face of the complaint, the dismissal of the complaint on such grounds may constitute dismissal for failure to state a claim under Rule 12(b)(6) and be counted as a strike under Section 1915(g)).

(6) We find it unnecessary to reach this argument in Wall's case, however. Walls, in fact, has had at least three prior cases dismissed in their entirety in order to justify revocation of his IFP status.<sup>4</sup> In *Walls v. Williams*,<sup>5</sup> the United States District Court dismissed Walls' complaint as frivolous. In *Walls v. Taylor*,<sup>6</sup> the Superior Court dismissed Walls' complaint as factually and legally frivolous. Finally, in *Walls v. Little*,<sup>7</sup> the Superior Court held that Walls' complaint failed to state a claim and also that the defendants had qualified immunity. All three decisions count as strikes under Section 8804(f). Accordingly, we reject Walls' first argument on appeal.

(7) Walls next claims that the three strikes rule may be applied only to bar civil complaints and not to bar petitions for extraordinary writs. Thus, he argues that the Superior Court erred in applying Section 8804(f) to his cause of action below because his complaint included a claim for mandamus relief. We disagree. Even assuming that Walls' complaint constituted a

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<sup>4</sup> Walls has been such a prolific litigant of meritless claims since his incarceration that the Superior Court in 1989 ordered that Walls not be permitted to pursue further civil litigation without prepayment of the filing fees unless he first could establish probable cause that he had a valid claim for relief. See *Walls v. New Castle County Police*, 1989 WL 434776 (Del. Super. Mar. 27, 1989), *aff'd*, 1989 WL 88651 (Del. July 17, 1989).

<sup>5</sup> *Walls v. Williams*, 99-183-RRM (D. Del. 1999).

<sup>6</sup> *Walls v. Taylor*, 2004 WL 906550 (Del. Apr. 26, 2004) (affirming Superior Court's dismissal of Walls' complaint as factually and legally frivolous).

<sup>7</sup> *Walls v. Little*, 2011 WL 5288871 (Del. Super. Aug. 15, 2011).

properly-filed petition for an extraordinary writ of mandamus, he is simply wrong in arguing that Section 8804(f) does not apply to extraordinary writs. Section 8801(1) specifically defines the term “complaint,” which is used in Section 8804(f), to mean “any civil action or miscellaneous action *or any application for an extraordinary writ.*”<sup>8</sup> Although Section 8804(f) specifically provides that no writ of *habeas corpus* shall be dismissed under the three strikes rule, that exemption has no application to Walls’ complaint in this case. Accordingly, we reject Walls’ second argument on appeal.

(8) Walls’ final argument on appeal is that the three strikes rule violates the Delaware Constitution because it restricts his access to the courts, violates precepts of due process and equal protection, and violates the separation of powers doctrine that prohibits the legislature from encroaching upon the jurisdiction of the courts. We disagree. Section 8804(f) does not bar a prisoner’s access to courts in Delaware. It only denies the prisoner who has a history of meritless civil litigation and who is *not* under imminent danger of serious physical injury at the time of filing his most recent complaint from being granted “the privilege of filing [another complaint] before he has acquired the necessary filing fee.”<sup>9</sup> Moreover, Walls’ equal

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<sup>8</sup> DEL. CODE ANN. tit. 10, § 8801(1) (2013).

<sup>9</sup> *Abdul-Akbar v. McKelvie*, 239 F.3d 307, 314 (3d Cir. 2001).

protection argument fails because indigent prisoners are not entitled to any heightened protection under the equal protection clause.<sup>10</sup> Finally, we find no merit to Walls' contention that Section 8804(f) violates the separation of powers doctrine because the statute is a purely procedural rule that does not impinge upon the jurisdiction of the courts.<sup>11</sup> We do not, however, address the State's suggestion that the rule is mandatory and must be applied by the courts without the exercise of judicial discretion.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely  
Justice

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<sup>10</sup> *Id.* at 317.

<sup>11</sup> *See Rivera v. Allin*, 144 F.3d 719, 725 (11<sup>th</sup> Cir. 1998) (holding that the federal three strikes rule did not violate the separation of powers doctrine because the statute is a purely procedural rule that neither creates nor prohibits any cause of action from frequent filer prisoners), *abrogated on other grounds by Jones v. Bock*, 549 U.S. 199 (2007).