

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 09-2411**

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IRVING E. TWITTY,

Plaintiff - Appellant,

v.

NATIONWIDE INSURANCE COMPANY; PATRICIA DUGAN, CPCU AIC;  
CHERYLON DEAN, Claims Invest; DENNIS GILLILAN, Claims  
Manager; ALECIA CORNELIUS, Regulator; WANDA W. SMITH;  
TIJUANA L. CRISP; OWNER OF JEEP GRAND CHEROKEE JEEP;  
GEOFFREY W. GIBBON, Attorney at Law; GRENVILLE D. MORGAN,  
JR., Attorney at Law; JOHN C. FEW, Circuit Court Judge,

Defendants - Appellees.

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Appeal from the United States District Court for the District of  
South Carolina, at Greenville. R. Bryan Harwell, District  
Judge. (6:09-cv-02381-RBH)

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Submitted: May 6, 2011

Decided: May 24, 2011

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Before WILKINSON, KEENAN, and WYNN, Circuit Judges.

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Vacated and remanded by unpublished per curiam opinion.

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Irving E. Twitty, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Irving E. Twitty appeals from the district court's order accepting the magistrate judge's recommendation and concluding that Twitty had three prior actions dismissed on the ground that they were frivolous, malicious, or failed to state a claim upon which relief may be granted under the Prison Litigation Reform Act ("PLRA"), 28 U.S.C. § 1915(b) (2006). If an applicant has had three actions or appeals so dismissed, the applicant may not proceed without prepayment of fees unless the applicant is under "imminent danger of serious physical injury." 28 U.S.C. § 1915(g) (2006).

The district court relied on the following three actions as forming a basis for Twitty's three such prior dismissals: (1) Twitty v. Petty, No. 3:00-47-DWS (D.S.C. Feb. 24, 2000); (2) Twitty v. Stevens, No. 7:00-2615-DWS (D.S.C. Sept. 20, 2000); and (3) Twitty v. Werner, et al. (D.S.C. Jan. 9, 2002).<sup>1</sup> (R. 10 at 2). Each of these cases, however, was dismissed without prejudice and therefore cannot qualify as a predicate strike under the PLRA. See McLean v. United States, 566 F.3d 391, 395 (4th Cir. 2009) (noting the dismissal of an action without prejudice for failure to state a claim may not count as a "strike" under the PLRA).

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<sup>1</sup> Independent research reveals this could be Case No. 7:01-4131-19BG.2.

Accordingly, we vacate the district court's order finding that the above dismissals constituted strikes against Twitty. We remand for further consideration of Twitty's PLRA application in accordance with this opinion and McLean.<sup>2</sup> We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

VACATED AND REMANDED

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<sup>2</sup> In her report and recommendation, the magistrate judge noted that Twitty had filed 16 previous actions in that court.