

FILED

OCT 9 2009

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Jeffrey M. Young-Bey,

Plaintiff,

v.

Wendell C. Robinson,

Defendant.

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Civil Action No. 09-1669 (UNA)

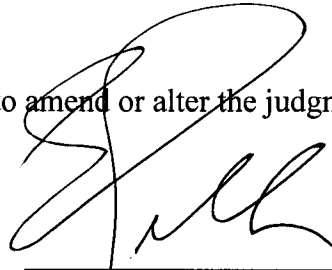
MEMORANDUM ORDER

Plaintiff, a prisoner proceeding pro se, has submitted a “Motion to Arrest Judgment.” In it, he seeks to have this Court alter or amend a judgment which dismissed this action for failure to state a claim upon which relief may be granted and advised him that the determination would count as a strike for purposes of 28 U.S.C. § 1915(g). In his motion, plaintiff notes that this suit has nothing to do with the conditions of his prison confinement, and he argues that two other courts have held that the “PLRA[‘s] 3-strikes [is] inapplicable where inmate[’]s claim does not involve a conditions of confinement action.” Plaintiff’s cites *Kolocotronis v. Morgan*, 247 F.3d 726, 728 (8th Cir. 2001), and *Andrews v. King*, 398 F.3d 1113, 1122 (9th Cir. 2005) as support for his proposition.

Plaintiff is wrong; the cited cases do not support the proposition he advances. The court in *Kolocotronis* pointed out that Kolocotronis was not a “prisoner” as that term is defined in 28 U.S.C. § 1915(h), and therefore, was not subject to the provisions of § 1915. 247 F.3d at 728 (“He is a mental patient, not a convict.”). The court in *Andrews* reiterated its prior holding that “the PLRA’s revised in forma pauperis provisions relating to prisoners do not apply to habeas

proceedings.” 398 F.3d at 1122. Those cases do not apply to this case. Plaintiff is a prisoner and his suit against Robinson was not a habeas proceeding. Accordingly, the court was correct to note that the dismissal counts as a strike for purposes of 28 U.S.C. § 1915(g). Accordingly, it is hereby

ORDERED that the plaintiff’s motion to amend or alter the judgment is DENIED.



United States District Judge

Date:

10/5/09