

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-12802-A

In re: STEPHEN DANIEL LEONARD,

Petitioner.

On Petition for Writ of Mandamus from the United States District Court for the
Southern District of Florida

ORDER:

Stephen Leonard, a Florida prisoner proceeding *pro se*, petitions this Court for a writ of mandamus arising out of a prisoner civil rights complaint, 18 U.S.C. § 1983, which the U.S. District Court for the Southern District of Florida dismissed under the "three strike" provision of the Prison Litigation Reform Act ("PLRA"), 28 U.S.C. § 1915(g). In his petition, Leonard requests that this Court compel its Clerk of Court to file his motions for reconsideration and for leave to proceed IFP and his petition for panel rehearing, all filed in his appeal from the district court's dismissal of his § 1983 complaint.

Under 28 U.S.C. § 1915(g), a prisoner may not bring a civil action or appeal a judgment in a civil action or proceeding under § 1915 if he:

has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). The "three strikes" provision of § 1915(g) applies to mandamus petitions arising from civil actions and prevents a prisoner who has "three strikes" from filing a

mandamus petition in this Court without first paying the full applicable filing fees when the petition arises from an underlying civil rights action. *See In re Crittenden*, 143 F.3d 919, 920 (5th Cir. 1998) (persuasive authority); *see also In re Washington*, 122 F.3d 1345 (10th Cir. 1997) (persuasive authority). Absent the imminent-danger exception to the PLRA's "three strikes" provision, "[a]fter the third meritless suit, the prisoner must pay the full filing fee at the time he initiates suit." *Dupree v. Palmer*, 284 F.3d 1234, 1236 (11th Cir. 2002) (quotation omitted).

In determining whether a prisoner is in imminent danger, a court must look to the complaint as whole, construing it liberally and accepting the allegations as true, and determine "whether his complaint, as a whole, alleges imminent danger of serious physical injury." *Brown v. Johnson*, 387 F.3d 1344, 1350 (11th Cir. 2004). Past dangers are not sufficient to qualify under the imminent-danger exception to the "three-strikes" provision of § 1915(g). *See Medberry v. Butler*, 185 F.3d 1189, 1193 (11th Cir. 1999).

A review of Leonard's prior filings in the district court and this Court confirm that Leonard, while confined, has filed at least three prior civil actions or appeals that have been dismissed on the grounds that they were frivolous or failed to state a claim upon which relief may be granted. (See CM/ECF for the U.S. Dist. Ct. for the S.D. Fla., *Leonard v. Monroe Cnty. Sheriff's Office*, Case No. 4:16-cv-10046 (dismissing 42 U.S.C. § 1983 action for failure to state a claim upon which relief could be granted); CM/ECF for the 11th Cir., *Leonard v. Monroe Cnty. Sheriff's Office*, Case No. 16-17172 (dismissing § 1983 appeal as frivolous); CM/ECF for the U.S. Dist. Ct. for the S.D. Fla., *Leonard v. Monroe Cnty. Fla.*, No. 4:18-cv-10139 (dismissing § 1983 action for failure to state a claim upon which relief could be granted)).

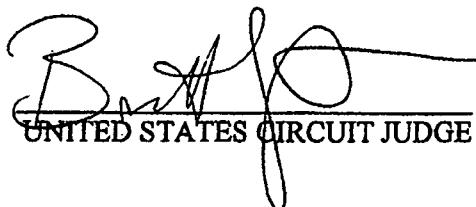
Furthermore, Leonard is not currently under imminent danger of serious physical injury. *See Brown*, 387 F.3d at 1350; *Medberry*, 185 F.3d at 1193. Accordingly, Leonard cannot

proceed without prepaying the filing fee under 28 U.S.C. § 1915, and his motion is DENIED.

See 28 U.S.C. § 1915(g); *Dupree*, 284 F.3d at 1236.

If Leonard does not prepay the entire appellate filing fee within 14 days from the date of this order, this petition will be dismissed for lack of prosecution without further notice, pursuant to Eleventh Circuit Rule 42-1(b).

Finally, this Court's Clerk is directed to list Leonard as a "three-striker" under the PLRA in this Court for the purposes of future matters. Further, this Court VACATES the consent form that Leonard filed in this matter and DIRECTS that any partial filing fee payments made to this Court be refunded and that the prison custodian of the facility where Leonard is incarcerated return to him any monies that have been removed from his inmate account relating to this matter.



UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

No. 19-13561-A

OCT 16 2019

David J. Smith
Clerk

STEPHEN DANIEL LEONARD,
in his individual and official capacity,

Plaintiff - Appellant,

versus

STATE OF FLORIDA,
FLORIDA DEPARTMENT OF CORRECTIONS,
DADE CORRECTIONAL INSTITUTION,
SGT. M SPEIGHTS,
in his individual and official capacity,
CAPT. J. RODRIGUEZ,
in his individual and official capacity, et al.,

Defendants - Appellees.

Appeal from the United States District Court
for the Southern District of Florida

ENTRY OF DISMISSAL: Pursuant to the 11th Cir.R.42-1(b), this appeal is DISMISSED for want of prosecution because the appellant Stephen Daniel Leonard has failed to pay the filing and docketing fees to the district court within the time fixed by the rules., effective October 16, 2019.

DAVID J. SMITH
Clerk of Court of the United States Court
of Appeals for the Eleventh Circuit

by: Denise E. O'Guin, A, Deputy Clerk

FOR THE COURT - BY DIRECTION

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-12058-E

STEPHEN DANIEL LEONARD,
in his individual and official capacity,

Plaintiff - Appellant,

versus

STATE OF FLORIDA,
FLORIDA DEPARTMENT OF CORRECTIONS,
DADE CORRECTIONAL INSTITUTION,
SGT. M SPEIGHTS,
in his individual and official capacity,
CAPT. J. RODRIGUEZ,
in individual and official capacity, et al.,

Defendants - Appellees.

Appeal from the United States District Court
for the Southern District of Florida

ENTRY OF DISMISSAL: Pursuant to the 11th Cir.R.42-1(b), this appeal is DISMISSED for want of prosecution because the appellant Stephen Daniel Leonard has failed to pay the filing and docketing fees to the district court within the time fixed by the rules., effective June 26, 2019.

DAVID J. SMITH
Clerk of Court of the United States Court
of Appeals for the Eleventh Circuit

by: Gloria M. Powell, E, Deputy Clerk

FOR THE COURT - BY DIRECTION

**Additional material
from this filing is
available in the
Clerk's Office.**