

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 24 2020

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

ROLAND I. KEHANO, Sr.,

Plaintiff-Appellant,

v.

SCOTT HARRINGTON, Warden; et al.,

Defendants-Appellees.

No. 19-15512

D.C. No.

1:19-cv-00018-SOM-KJM

District of Hawaii,

Honolulu

ORDER

Before: WALLACE, CANBY, and TASHIMA, Circuit Judges.

Kehano's petition for panel rehearing (Docket Entry No. 23) is denied.

No further filings will be entertained in this closed case.

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 16 2019

FOR THE NINTH CIRCUIT

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ROLAND I. KEHANO, SR.,

Plaintiff-Appellant,

v.

SCOTT HARRINGTON, Warden; et al.,

Defendants-Appellees.

No. 19-15512

D.C. No. 1:19-cv-00018-SOM-KJM

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Hawaii  
Susan O. Mollway, District Judge, Presiding

Submitted December 11, 2019\*\*

Before: WALLACE, CANBY, and TASHIMA, Circuit Judges.

Hawaii state prisoner Roland I. Kehano, Sr. appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action for failure to pay the filing fee after denying Kehano's motion to proceed in forma pauperis ("IFP").

We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Washington v.*

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*L.A. Cty. Sheriff's Dep't*, 833 F.3d 1048, 1054 (9th Cir. 2016). We affirm.

The district court properly denied Kehano's motion to proceed IFP because Kehano had filed three prior actions that were dismissed as frivolous, malicious, or for failure to state a claim, and he did not plausibly allege that he was "under imminent danger of serious physical injury" at the time he lodged the complaint. *See* 28 U.S.C. § 1915(g); *Andrews v. Cervantes*, 493 F.3d 1047, 1053, 1055-56 (9th Cir. 2007) (discussing the imminent danger exception to § 1915(g)).

The district court did not abuse its discretion by denying Kehano's motions for reconsideration because Kehano failed to establish any basis for such relief. *See Sch. Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d, 1262-63 (9th Cir. 1993) (setting forth standard of review and grounds for reconsideration under Fed. R. Civ. P. 59(e) and 60(b)).

We reject as without merit Kehano's contentions concerning collusion between the district court judge and Kehano's son's health care providers.

Kehano's pending motions raise issues outside the scope of this appeal and are denied.

**AFFIRMED.**

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

ROLAND I. KEHANO, SR.,	)	CIV. NO. 19-00018 SOM-KJM
#A0134841,	)	
	)	ORDER DENYING OBJECTIONS
Plaintiff,	)	
	)	
vs.	)	
	)	
SCOTT HARRINGTON, et al.,	)	
	)	
Defendants.	)	
_____	)	

**ORDER DENYING OBJECTIONS**

On February 6, 2019, this court dismissed this action without prejudice to Plaintiff's refiling with concurrent payment of the filing fee, and warned Plaintiff that the court would take no action on any documents that he filed without such payment. See Dismissal Order, ECF No. 3, PageID #14. The court found that Plaintiff, a prisoner proceeding *pro se*, has accrued three "strikes" pursuant to 28 U.S.C. § 1915(g),<sup>1</sup> did not allege that he was in imminent

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<sup>1</sup> See, e.g., *Kehano v. Pioneer Mill Co.*, No. 1:12-cv-00448 (D. Haw. Dec. 6, 2012) (dismissing for failure to state a claim), App. No. 16-15129 (9th Cir. Mar. 8, 2016) (dismissed as untimely); *Kehano v. Espinda*, No. 1:12-cv-00529 (D. Haw. Oct. 24, 2012) (dismissing for failure to state a claim) (no appeal taken); *Kehano v. State*, No. 2:05-cv-02475 (D. Ariz. Sept. 8, 2005) (dismissing for failure to state a claim), *aff'd*, App. No.

danger of serious physical injury when he commenced this action and therefore cannot proceed without payment of the civil filing fee. *Id.*; see also *Andrews v. Cervantes*, 493 F.3d 1047, 1053, 1055 (9th Cir. 2007).

Before the court are Plaintiff's serial "Objections" to the dismissal of this action, which are jointly considered and construed as a Motion for Reconsideration. See ECF Nos. 5-8. Plaintiff's Objections raise numerous issues. For instance, Plaintiff refers to a state post-conviction petition, S.P.P. No. 19-1-0002(2), and says that State and federal officials have colluded to deny him due process. Plaintiff discusses his son's death in 2015, allegedly due to the negligence of Kaiser Permanente or Maui Memorial Hospital staff and deliberate indifference of prison officials, which is the basis for this suit. Plaintiff states that he was prevented from attending a recent hearing before the Hawaii

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05-16908 (9th Cir. 2007); *Kehano v. State*, No. 2:04-cv-00935 (D. Ariz. Oct. 25, 2005) (dismissing for failure to state a claim), *aff'd*, App. No. 05-17237 (9th Cir. 2006).

Medical Inquiry and Conciliation Panel (MICP), in MICP No. 2018-060, regarding his son's death, and was later disciplined because he took a pen from a prison staff member's desk while waiting to connect with the MICP hearing officers.

Relevant to the dismissal of this action, Plaintiff says that, although he "was not in imminent danger of serious physical injury" when he brought this action, he suffers from unidentified "mental and life threatening medical issues" relating to his son's 2015 death and his inability to attend the MICP hearing. Plaintiff also alleges that he "corrected all 4 strikes in the 9th Cir. Court of Appeals," on or about Feb. 16, 2017. ECF No. 8, PageID #40, 42.

"A motion for reconsideration should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law," and it "may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation." *Marlyn*

*Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009) (internal quotations marks, citations, and emphasis omitted).

First, Plaintiff admits that he was not in imminent danger of serious physical injury when he brought this action. The court cannot reasonably infer that Plaintiff was in imminent, physical jeopardy due to his son's alleged wrongful death in 2015, his inability to attend the MICP hearing because he was incarcerated, or his disciplinary sanction for taking a pen.

Second, the court has carefully reviewed the federal court's judicial case database for evidence to support Plaintiff's allegation that he has "corrected" his strikes. This court remains convinced that Plaintiff has accrued at least four strikes pursuant to 28 U.S.C. § 1915(g). See *supra*, n.1. The "February 16, 2017" Ninth Circuit decision to which Plaintiff apparently refers is an appellate order denying Plaintiff's application to file a second or successive state petition for writ of habeas corpus in *Kehano v. Harrington*, App. No. 16-73717 (9th Cir. 2016). There

are no decisions showing that his strikes have been absolved.

Plaintiff may not proceed *in forma pauperis* in this action, and there is no persuasive reason to reconsider the February 6, 2019 Dismissal Order. Plaintiff's Objections, ECF Nos. 5-8, are overruled. The court will take no further action on any documents filed herein, regardless of whether Plaintiff submits a filing fee, beyond processing a notice of appeal.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii; March 7, 2019.



/s/ Susan Oki Mollway  
Susan Oki Mollway  
United States District Judge



IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

ROLAND I. KEHANO, SR.,	)	CIV. NO. 19-00018 SOM-KJM
#A0134841,	)	
	)	DISMISSAL ORDER
Plaintiff,	)	
	)	
vs.	)	
	)	
SCOTT HARRINGTON, LYLE	)	
ANTONIO, GARY KAPLAN,	)	
KEONI MOIERRA, PAUL	)	
NIESEN, STATE OF HAWAII,	)	
	)	
Defendants.	)	
_____	)	

**DISMISSAL ORDER**

Before the court is pro se Plaintiff Roland I. Kehano, Sr.'s prisoner civil rights complaint. Kehano, who is a Hawaii state prisoner, has submitted neither the civil filing fee for commencing this action nor an *in forma pauperis* ("IFP") application. Kehano seeks to hold Halawa Correctional Facility (HCF) prison officials liable for the death of his son, Shane Kehano, in December 2015, allegedly due to negligent medical treatment that Shane received at the Maui Memorial Hospital. Kehano does not explain what

connection Defendants HCF prison officials had to Shane Kehano's treatment and death.

**I. 28 U.S.C. § 1915(g)**

Kehano has accrued more than three strikes pursuant to 28 U.S.C. § 1915(g), and the court has previously notified him of these strikes.<sup>1</sup> He may not proceed without concurrent payment of the filing fee unless his pleadings show that he was in imminent danger of serious physical injury at the time that he brought this action. See *Andrews v. Cervantes*, 493 F.3d 1047, 1053, 1055 (9th Cir. 2007). Nothing suggests that Kehano is or was in imminent danger of serious physical injury when he filed this action or that there is a continuing practice that injured him in the past that

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<sup>1</sup> See, e.g., *Kehano v. Pioneer Mill Co.*, 1:12-cv-00448 (D. Haw. Dec. 6, 2012) (dismissing for failure to state a claim); *Kehano v. Espinda*, No. 1:12-cv-00529 (D. Haw. Oct. 24, 2012) (dismissing for failure to state a claim and notifying Kehano that this case, if affirmed, would constitute a strike, and listing his previous two strikes in Arizona); *Kehano v. State*, No. 2:04-cv-00935 (D. Ariz. Oct. 25, 2005) (dismissing for failure to state a claim); *Kehano v. State*, No. 2:05-cv-02475 (D. Ariz. Sept. 8, 2005) (dismissing for failure to state a claim). See also *Andrews v. King*, 398 F.3d 1113, 1116 (9th Cir. 2005) (allowing a court to consider court records of previous dismissals and requiring notice to the prisoner of these dismissals before denying IFP under § 1915(g)).

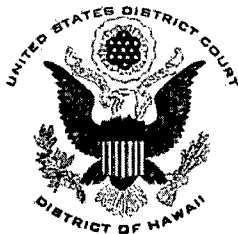
poses an "ongoing danger." *Id.* at 1056. Rather, Kehano complains of medical malpractice against the Maui Memorial Hospital for the death of his son in December 2015. Kehano may not proceed in this action without concurrent payment of the civil filing fee.

## II. CONCLUSION

(1) This action is DISMISSED without prejudice to Kehano's filing of a new action with concurrent payment of the filing fee.

(2) The February 4, 2019 Deficiency Order, ECF No. 2, is VACATED. The Clerk of Court is DIRECTED to enter judgment and to terminate this case. The court will take no action on any documents filed herein that are not accompanied by the civil filing fee, beyond processing a notice of appeal.

IT IS SO ORDERED.



/s/ Susan Oki Mollway  
Susan Oki Mollway  
United States District Judge

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

MAR 21 2019

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

ROLAND I. KEHANO, Sr.,

Plaintiff - Appellant,

v.

SCOTT HARRINGTON, Warden;  
LYLE ANTONIO, Chief of Security;  
GARY KAPLAN, Dept. Coers.  
Admin's; KEONI MOIERRA, UTM;  
PAUL NIESEN, Case Manager;  
STATE OF HAWAII,

Defendants - Appellees.

No. 19-15512

D.C. No. 1:19-cv-00018-SOM-KJM  
U.S. District Court for Hawaii,  
Honolulu

**TIME SCHEDULE ORDER**

The parties shall meet the following time schedule.

**Fri., May 17, 2019**

Appellant's opening brief and excerpts of record  
shall be served and filed pursuant to FRAP 31 and  
9th Cir. R. 31-2.1.

**Failure of the appellant to comply with the Time Schedule Order will result in  
automatic dismissal of the appeal. See 9th Cir. R. 42-1.**

**Appellants without representation of counsel in a prisoner appeal may have  
their case submitted on the briefs and record without oral argument,  
pursuant to FRAP 34(a).**

*APPENDIX A. 3.*

FOR THE COURT:

MOLLY C. DWYER  
CLERK OF COURT

By: Jessica Poblete Dela Cruz  
Deputy Clerk  
Ninth Circuit Rule 27-7

APPENDIX A. 4.

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

FILED

MAY 30 2019

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U.S. COURT OF APPEALS

ROLAND I. KEHANO, Sr.,

Plaintiff-Appellant,

v.

SCOTT HARRINGTON, Warden; et al.,

Defendants-Appellees.

No. 19-15512

D.C. No.

1:19-cv-00018-SOM-KJM

District of Hawaii,

Honolulu

ORDER

Before: LEAVY and BEA, Circuit Judges.

Appellant's motion to proceed in forma pauperis is granted (Docket Entry No. 3). Pursuant to 28 U.S.C. § 1915(b)(1) and (2), however, appellant eventually must pay the full amount of the filing and docketing fees for this appeal.

Accordingly, within 21 days after the date of this order, appellant shall complete and file with this court the enclosed prisoner authorization form, which directs the prison officials at appellant's institution to assess, collect, and forward to the court the \$505.00 filing and docketing fees for this appeal on a monthly basis whenever funds exist in appellant's trust fund account. These fees will continue to be collected regardless of the date or manner of disposition of this appeal. *See* 28 U.S.C. § 1915(b)(2), (e)(2).

If appellant fails to comply with this order, the Clerk shall dismiss this appeal for failure to prosecute. *See* 9th Cir. R. 42-1.

The Clerk shall file the informal opening brief received at Docket Entry No. 13. Because there is no appearance by appellees, briefing will be completed upon the filing of the opening brief.

Because appellant is proceeding without counsel, the court waives the excerpts of record requirement. *See* 9th Cir. R. 30-1.2.

The Clerk shall serve this order and a prisoner authorization form on appellant.

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