

No. 20-2009

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Nov 10, 2020
DEBORAH S. HUNT, Clerk

DARRYL A. ROBINSON,

Plaintiff-Appellant,

V.

YEE, Law Librarian,

Defendant-Appellee.

ORDER

Before: SILER, CLAY, and THAPAR, Circuit Judges.

This matter is before the court upon initial consideration of appellate jurisdiction.

On January 15, 2010, the district court entered an order dismissing Darryl A. Robinson's 42 U.S.C. § 1983 complaint without prejudice for failure to pay the required filing fee. Robinson appealed on January 25, 2010, but the appeal was dismissed for want of prosecution on August 30, 2010. No. 10-1115. Robinson filed a second notice of appeal on October 3, 2018, but the appeal was dismissed for lack of jurisdiction because it was over eight years late. No. 18-2162. Robinson filed a third notice of appeal on June 6, 2019, but the appeal was also dismissed for lack of jurisdiction because it was untimely filed. No. 19-1630. On April 14, 2020, Robinson filed a fourth notice of appeal, but the appeal was dismissed for lack of jurisdiction because it failed to "designate the judgment, order, or part thereof being appealed" as required by Federal Rule of Appellate Procedure 3(c)(1)(B). No. 20-1414.

Robinson's most recent notice of appeal, filed on October 5, 2020, also fails to "designate the judgment, order, or part thereof being appealed" as required by Rule 3(c)(1)(B). To the extent that the current appeal concerns the January 2010 order, it is late. *See Hamer v. Neighborhood Hous. Servs. of Chi.*, 138 S. Ct. 13, 16–17 (2017); 28 U.S.C. § 2107(a).

Robinson was warned in No. 20-1414 that he could be sanctioned if he filed future appeals that were "clearly late, a successive appeal from the same decision of the district court, or an appeal to this court seeking review of a prior decision of this court." This appeal, No. 20-2009, is both clearly late and a duplicate of the previous appeals from the January 2010 decision.

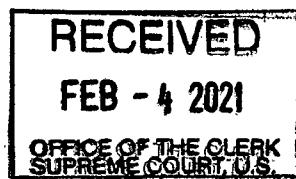
It is ordered that appeal No. 20-2009 is **DISMISSED**.

It is further ordered that sanctions be imposed against Robinson. Robinson is denied leave to proceed *in forma pauperis* in any future appeal that he may file in this case. If he chooses to file a subsequent notice of appeal in this case, he must pay the appellate filing fee in full prior to the appeal being permitted to proceed in this court. Failure to pay the required appellate filing fee will result in administrative termination of the appeal.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk



**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DARRYL ANTHONY ROBINSON,

Plaintiff,

Case Number: 2:10-CV-10069

v.

HON. GERALD E. ROSEN

YEE,

Defendant.

**ORDER DENYING LEAVE TO PROCEED *IN FORMA PAUPERIS*
AND SUMMARILY DISMISSING COMPLAINT**

Plaintiff, Darryl Anthony Robinson, currently confined at the Macomb Correctional Facility in New Haven, Michigan, has filed a *pro se* civil rights complaint pursuant to 42 U.S.C. § 1983. Plaintiff has requested that he be permitted to proceed *in forma pauperis* in this case. See 28 U.S.C. § 1915(a)(1) (1996). For the reasons stated below, the Court will deny Plaintiff leave to proceed *in forma pauperis* and will dismiss the complaint pursuant to 28 U.S.C. § 1915(g).

Plaintiff's complaint alleges that defendant Yee violated his First Amendment right of access to the courts. He seeks monetary and injunctive relief.

Under the Prison Litigation Reform Act ("PLRA"), Pub. L. No. 104-134, 110 Stat. 1321 (1996), a prisoner is prevented from proceeding *in forma pauperis* in a civil action under certain circumstances. The statute states, in relevant part:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section, if the prisoner 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.

42 U.S.C. § 1915(g).

In short, this “three strikes” provision allows the Court to dismiss a case where the prisoner seeks to proceed *in forma pauperis*, if, on three or more previous occasions, a federal court has dismissed the prisoner’s action because it was frivolous or malicious or failed to state a claim for which relief may be granted. 28 U.S.C. § 1915(g) (1996); *Dupree v. Palmer*, 284 F.3d 1234, 1236 (11th Cir. 2002) (holding that “the proper procedure is for the district court to dismiss the complaint without prejudice when it denies the prisoner leave to proceed in forma pauperis pursuant to the provisions of § 1915(g)” because the prisoner “must pay the filing fee at the time he initiates the suit.”). Plaintiff has filed at least three prior civil rights complaints which have been dismissed as frivolous or for failure to state a claim upon which relief may be granted. *See Robinson v. Lesatz, et al.*, No. 2:05-cv-217 (W.D. Mich. Nov. 7, 2005); *Robinson v. Luoma*, No. 2:05-cv-218 (W.D. Mich. Nov. 7, 2005); *Robinson v. Kutchie, et al.*, No. 2:05-cv-211 (W.D. Mich. Oct. 28, 2005); *Robinson v. Snow, et al.*, No. 2:05-cv-212 (W.D. Mich. Oct. 28, 2005); *Robinson v. Etelamaki, et al.*, No. 2:05-cv-200 (W.D. Mich. Oct. 4, 2005); *Robinson v. Caruso, et al.*, No. 2:05-cv-191 (W.D. Mich. Sept. 21, 2005).

A plaintiff may maintain a civil action despite having had three or more civil actions dismissed as frivolous if the prisoner is “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). To establish that his complaint falls within the statutory exception to the three strikes rule, a prisoner must allege that he is under imminent danger at the time that he seeks to file his complaint and proceed *in forma pauperis*. *Malik v. McGinnis*, 293 F.3d 559, 562 (2d Cir. 2002) (holding that imminent danger exception requires that the danger exist at time complaint is

filed); *Ashley v. Dilworth*, 147 F.3d 715, 717 (8th Cir. 1998) (plaintiff sufficiently alleged imminent danger of serious physical injury where he claimed that he was placed near inmates on his enemy list and subject to ongoing danger); *Banos v. O'Guin*, 144 F.3d 883, 885 (5th Cir. 1998) (past body cavity searches failed to establish imminent danger of serious physical injury); *Luedtke v. Bertrand*, 32 F. Supp. 2d 1074, 1077 (E.D. Wis. 1999) (allegation of past physical injury is insufficient to meet statutory exception).

In this case, Plaintiff's claim regarding his right of access to the courts does not raise the danger of physical harm.

Accordingly, **IT IS ORDERED** that Plaintiff's request to proceed *in forma pauperis* is **DENIED**.

IT IS FURTHER ORDERED that Plaintiff's complaint is **DISMISSED WITHOUT PREJUDICE**. Should Plaintiff wish to pursue the allegations contained in his complaint, he must submit payment of the \$350.00 filing fee within 30 days. Upon receipt of the filing fee, the Court will re-open the case and review the complaint to determine whether it should be served or should be summarily dismissed under 28 U.S.C. § 1915A(b).

s/Gerald E. Rosen
Chief Judge, United States District Court

Dated: January 15, 2010

I hereby certify that a copy of the foregoing document was served upon:

Darryl A. Robinson
172898
Macomb (MSP)
Macomb Correctional Facility
34625 26 Mile Rd.
New Haven, MI 48048

on January 15, 2010, by ordinary mail.

s/Ruth Brissaud

Case Manager

Case No. 20-2009

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

ORDER

DARRYL ANTHONY ROBINSON

Plaintiff - Appellant

v.

YEE, Law Librarian

Defendant - Appellee

BEFORE: SILER, Circuit Judge; CLAY, Circuit Judge; THAPAR, Circuit Judge;

Upon consideration of the petition for rehearing filed by the Appellant,

It is **ORDERED** that the petition for rehearing be, and it hereby is, **DENIED**.

ENTERED BY ORDER OF THE COURT
Deborah S. Hunt, Clerk

Issued: December 28, 2020

