

Appendix B

United States Court of Appeals
for the Fifth Circuit

No. 21-40850

United States Court of Appeals
Fifth Circuit

FILED

January 4, 2022

MICHAEL G. PETERS,

Lyle W. Cayce
Clerk

Plaintiff—Appellant,

versus

THE STATE OF TEXAS; TEXAS DEPARTMENT OF CRIMINAL
JUSTICE; BOBBY LUMPKIN,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 3:21-CV-241

CLERK'S OFFICE:

Under 5TH CIR. R. 42.3, the appeal is dismissed as of January 4,
2022, for want of prosecution. The appellant failed to timely pay the fee.



A True Copy
Certified order issued Jan 04, 2022

Lyle W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

No. 21-40850

LYLE W. CAYCE
Clerk of the United States Court
of Appeals for the Fifth Circuit

Christina Gardner

By: _____
Christina A. Gardner, Deputy Clerk

ENTERED AT THE DIRECTION OF THE COURT

Appendix "A"

NEW SLIPPER
3:21-CV-0241

United States District Court
Southern District of Texas

ENTERED

September 17, 2021

Nathan Ochsner, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

No. 3:21-CV-0241

Appealed 10-29-21

MICHAEL G. PETERS, TDCJ # 02019190, PLAINTIFF,

v.

THE STATE OF TEXAS, *ET AL.*, DEFENDANTS.

ORDER OF DISMISSAL

JEFFREY VINCENT BROWN, *UNITED STATES DISTRICT JUDGE*:

Plaintiff Michael G. Peters is presently incarcerated in the Texas Department of Criminal Justice—Correctional Institutions Division (TDCJ). Peters proceeds *pro se* and seeks leave to proceed *in forma pauperis*. He brings claims against three defendants: the State of Texas; TDCJ; and Bobby Lumpkin, the director of TDCJ. Dkt. 1. Having reviewed the pleadings, the plaintiff's litigation history, and all matters of record, the court dismisses this case for the reasons explained below.

Under the “three strikes” rule found in the Prison Litigation Reform Act (PLRA), a prisoner is not allowed to bring a civil action *in forma pauperis* in federal court if, while incarcerated, three or more of his civil actions or appeals were dismissed as frivolous, malicious or for failure to state a claim upon which

relief may be granted, unless he is under “imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). Once a prisoner has accumulated three qualifying dismissals or strikes for purposes of § 1915(g), he may not proceed without prepayment of the filing fee unless he fits within the imminent-danger exception at the time his complaint is filed. *See Brown v. Megg*, 857 F.3d 287, 290 (5th Cir. 2017); *Banos v. O’Guin*, 144 F.3d 883, 885 (5th Cir. 1998). The threat of imminent danger must be “real and proximate” and allegations regarding past harms do not suffice. *Ciarpaglini v. Saini*, 352 F.3d 328, 330 (7th Cir. 2003); *see Abdul-Akbar v. McKelvie*, 239 F.3d 307, 315 (3d Cir. 2001) (en banc).

Peters has filed numerous previous lawsuits, including at least three civil actions that have been dismissed as frivolous or for failure to state a claim upon which relief can be granted. *See Peters v. State of Texas*, Civil Action No. 4:17-2270 (S. D. Tex. July 27, 2017) (collecting Peters’s past strikes, dismissing case, and issuing sanctions warning). Peters therefore may not proceed *in forma pauperis* absent a showing that he is under imminent danger of serious physical injury. 28 U.S.C. § 1915(g); *Banos*, 144 F.3d at 885.

Peters’s complaint in this case does not allege imminent physical danger. Rather, he alleges that the defendants have slandered his name on the internet “worldwide” in order to prevent him from exposing political corruption, causing him loss of wages and business contracts over a 9-year period. He seeks damages in excess of \$100 million. Dkt. 1, at 4.

Peters's allegations in his complaint are insufficient to show imminent danger for purposes of § 1915(g). *See Brown*, 857 F.3d at 290; *Ciarpaglini*, 352 F.3d at 330. Because Peters is not otherwise eligible to proceed *in forma pauperis*, the court will dismiss the complaint without prejudice as barred by § 1915(g).

Based on the foregoing, the court orders as follows:

1. Peters's motion for leave to proceed *in forma pauperis* (Dkt. 2) is denied.
2. Peters's complaint (Dkt. 1) is dismissed without prejudice pursuant to 28 U.S.C. § 1915(g).
3. All other pending motions, if any, are denied as moot.

The Clerk is instructed to provide a copy of this order to the plaintiff and to the Manager of the Three-Strikes List for the Southern District of Texas at Three_Strikes@txs.uscourts.gov.

Signed on Galveston Island this 17th day of September, 2021.



JEFFREY VINCENT BROWN
UNITED STATES DISTRICT JUDGE