

United States Court of Appeals for the Fifth Circuit

No. 22-11162

United States Court of Appeals

Fifth Circuit

FILED

January 19, 2023

JOSEPH DINGLER,

Lyle W. Cayce
Clerk

Plaintiff—Appellant,

versus

TERRY GARRETT, *Rockwall County Sheriff*; NFN McBRIDE, *RSO Chief*; T. CALKINS, *RSO Major*; NFN GRAY, *RSO Captain*;
ROCKWALL COUNTY COURT #2,

Defendants—Appellees.

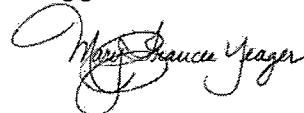
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:22-CV-1942

CLERK'S OFFICE:

Under 5TH CIR. R. 42.3, the appeal is dismissed as of January 19, 2023, for want of prosecution. The appellant failed to timely pay the docketing fee.

No. 22-11162

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



By: _____
Mary Frances Yeager, Deputy Clerk

ENTERED AT THE DIRECTION OF THE COURT



A True Copy
Certified order issued Jan 19, 2023

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

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

**LYLE W. CAYCE
CLERK**

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

January 19, 2023

Ms. Karen S. Mitchell
Northern District of Texas, Dallas
United States District Court
1100 Commerce Street
Earle Cabell Federal Building
Room 1452
Dallas, TX 75242

No. 22-11162 Dingler v. Garrett
USDC No. 3:22-CV-1942

Dear Ms. Mitchell,

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk

By: Mary Frances Yeager, Deputy Clerk
504-310-7686

cc w/encl:
Mr. Joseph Dingler

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JOSEPH DINGLER,
Plaintiff,

v.

TERRY GARRETT, et al.,
Defendants.

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No. 3:22-cv-01942-K (BT)

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Plaintiff Joseph Dingler, an inmate at Rockwall County Jail, filed this *pro se* civil action under 42 U.S.C. § 1983. Dingler did not pay the filing fee. Having screened Dingler's complaint, the undersigned recommends the Court DISMISS the complaint as barred by the three-strikes provision of 28 U.S.C. § 1915(g).

The "three strikes" provision of the Prison Litigation Reform Act (PLRA), 28 U.S.C. § 1915(g), precludes a prisoner from bringing a civil action *in forma pauperis* if on three or more prior occasions, while confined as a prisoner, he filed civil actions or appeals that were dismissed as frivolous, malicious, or for failure to state a claim. *See Jackson v. Johnson*, 475 F.3d 261, 265 (5th Cir. 2017). Section 1915(g) "comports with the PLRA's effort 'to filter out the bad claims filed by prisoners and facilitate consideration of the good.'" *Brown v. Megg*, 857 F.3d 287, 291 (5th Cir. 2017) (quoting *Coleman v. Tollefson*, 575 U.S. 532, 135 S. Ct. 1759, 1762 (2015)).

Dingler has accrued three strikes under § 1915(g). Before filing his complaint in this case, and while he was incarcerated as a prisoner, Dingler filed at least three other civil cases that were dismissed as frivolous or for failure to state a claim under 28 U.S.C. § 1915(e). *See Dingler v. Bowles*, 113 F. App'x 6, 7 (5th Cir. 2004) (per curiam) (finding the dismissal of the plaintiff's appeal counted as one strike under § 1915(g), and he accumulated two additional strikes in *Dingler v. Bowles*, No. 04-10130 (5th Cir. June 22, 2004)). Because Dingler has accrued three strikes, § 1915(g) precludes him from proceeding in this action *in forma pauperis* unless he alleges that he is in “imminent danger of serious physical injury” at the time of filing the complaint. *See Banos v. O'Guin*, 144 F.3d 883, 884 (5th Cir. 1998) (per curiam). To meet the imminent danger requirement of § 1915(g), the threat must be “real and proximate.” *Ciarpaglini v. Saini*, 352 F.3d 328, 330 (7th Cir. 2003); *see also Banos*, 144 F.3d at 885 (Under § 1915(g), the court “must determine if danger exists at the time the plaintiff seeks to file his complaint or notice of appeal IFP”) (emphasis in original). Allegations of past harm are insufficient to show imminent harm because the harm alleged must constitute “genuine emergencies” where “time is pressing.” *Heimermann v. Litscher*, 337 F.3d 781, 782 (7th Cir. 2003) (per curiam); *see also Banos*, 144 F.3d at 885 (finding the prisoner had “not alleged, much less established, that he faced imminent danger of serious physical injury at the time that his notice of appeal was filed”)).

Here, Dingler does not allege that he was in imminent danger of serious physical injury at the time he filed his complaint. He is therefore barred from proceeding *in forma pauperis* under § 1915(g).

Recommendation

The Court should DISMISS this civil action as barred by the three-strikes provision of 28 U.S.C. § 1915(g). Such dismissal is with prejudice to the refiling of an *in forma pauperis* complaint raising the same claims as presented here, but without prejudice to the refiling of this complaint with full payment of the \$402.00 filing fee.

Signed September 2, 2022.



REBECCA RUTHERFORD
UNITED STATES MAGISTRATE JUDGE

INSTRUCTIONS FOR SERVICE AND NOTICE OF RIGHT TO APPEAL/OBJECT

A copy of this report and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 14 days after being served with a copy. See 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). To be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. See Douglass v. United Services Automobile Ass'n, 79 F.3d 1415, 1417 (5th Cir. 1996), modified by statute on other grounds, 28 U.S.C. § 636(b)(1) (extending the time to file objections to 14 days).