

Appendix A

United States Court of Appeals
for the Fifth Circuit

No. 22-10641

United States Court of Appeals
Fifth Circuit

FILED

October 25, 2022

Lyle W. Cayce
Clerk

LAWRENCE EDWARD THOMPSON,

Plaintiff—Appellant,

versus

ALLRED UNIT,

Defendant—Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 7:22-CV-18

Before KING, JONES and SMITH, *Circuit Judges.*

PER CURIAM:*

Lawrence Edward Thompson, Texas prisoner # 408167, moves for leave to appeal in forma pauperis (IFP) from the dismissal of his civil action as barred under 28 U.S.C. § 1915(g). Thompson asserts that inadequate treatment for a bacterial infection and cold temperatures in his cell block put him in imminent danger of serious physical injury. His allegations regarding

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 22-10641

the bacterial infection are merely disagreements with his treatment and do not allege an imminent danger of serious physical injury. *See Baños v. O'Guin*, 144 F.3d 883, 885 (5th Cir. 1998). Thompson's conclusory and speculative assertions about his medical condition and conditions of confinement fail to allege that he faced imminent danger of serious physical injury at the time that he filed his complaint, appeal, or IFP motion. *Id.* Thompson has not shown that he is entitled to proceed IFP on appeal. *See* § 1915(g). He has also not shown that the district court erred by dismissing the complaint without prejudice based on the three strikes bar. *See Baños*, 144 F.3d at 885.

Thompson's IFP motion is DENIED, and the appeal is DISMISSED as frivolous. *See Baugh v. Taylor*, 117 F.3d 197, 202 & n.24 (5th Cir. 1997); 5TH CIR. R. 42.2.

Thompson is reminded that, because he has three strikes, he is barred from proceeding IFP in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. *See* § 1915(g). He is also WARNED that any pending or future frivolous or repetitive filings in this court or any court subject to this court's jurisdiction will subject him to additional sanctions. *See Coghlan v. Starkey*, 852 F.2d 806, 817 n.21 (5th Cir. 1988).

APPENDIX B

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION**

**LAWRENCE EDWARD THOMPSON,
TDCJ No. 408167,**

Movant,

v.

ALLRED UNIT,

Respondent.

§
§
§
§
§
§
§
§
§

Civil Action No. 7:22-cv-018-O

ORDER DISMISSING CASE

This is a Motion for Leave to Proceed *In Forma Pauperis* in a civil rights action filed by Lawrence Edward Thompson, an inmate confined in the Allred Unit of the Texas Department of Criminal Justice in Iowa Park, Texas. Thompson states that, pursuant to 28 U.S.C. § 1915(g), he is barred from proceeding *in forma pauperis* absent a showing of imminent danger of serious physical injury. *See* Motion, ECF No. 1.

Thompson seeks leave to proceed *in forma pauperis* in a civil rights action based on his claim of inadequate medical care at the Allred Unit. He states that, after he submitted a sick call request in which he claimed to have a bacterial infection, he was seen by a nurse who told him he had a rash and offered him hydrocortisone cream. *Id.* at 6. But Thompson argued that the problem was “internal” and left clinic without taking the cream. *Id.* He later saw a second nurse who offered hydrocortisone cream which Thompson again refused. *Id.* at 7.

Then Thompson complained to the warden that it was too cold in “ECB” where he was confined, that the cold temperatures were aggravating his medical problems, and that he wanted to be moved to general population or transferred to another unit. *Id.* at 7-8. The warden replied that Thompson was appropriately assigned per the prison medical department. *Id.* at 8. Thompson later

saw nurse Joseph Eastridge who prescribed amoxicillin 500mg for treatment of the bacterial infection that Thompson states he was suffering. *Id.* at 9.

Thompson further states that a letter from his mother took two weeks to arrive, that he was still confined in a cold prison area, that subsequent sick call requests were delayed for two months, that he wanted a refill of amoxicillin and his heat restriction removed, and that he wanted “muscle rub” for his back and right knee. *Id.* at 14-16. Thompson also complains that a nurse denied him treatment for a bacterial infection in his eyebrows after she claimed that she didn’t see any infection. *Id.* at 15. And he complains that a physician refused to refill his amoxicillin because he didn’t see a rash on Thompson. *Id.* at 22.

Thompson argues that he should be permitted to proceed *in forma pauperis* in this lawsuit because he is 70 years old with lots of medical problems and is in imminent danger of serious physical injury due to inadequate medical care. *Id.* at 23.

Review of Thompson’s litigation history reflects that he is barred from proceeding *in forma pauperis* pursuant to the provisions of the Prison Litigation Reform Act of 1995.

28 U.S.C. § 1915(g) provides that:

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.

The only exception to the “three-strikes” bar of § 1915(g) is when the prisoner is under imminent danger of serious physical injury. *Banos v. O’Guin*, 144 F.3d 883, 884 (5th Cir. 1998). To meet the “imminent danger” exception, the “threat or prison condition [must be] real and proximate.” *Valdez v. Bush*, No. 3:08-cv-1481-N, 2008 WL 4710808 at *1 (N.D. Tex. Oct. 24,

2008) (quoting *Ciarpaglini v. Saini*, 352 F.3d 328, 330 (7th Cir. 2003)). “Allegations of past harm do not suffice—the harm must be imminent or occurring at the time the complaint is filed.” *Id.* “Moreover, the prisoner must allege specific facts showing that he is under imminent danger of serious physical injury.” *Id.* “General allegations that are not grounded in specific facts which indicate that serious physical injury is imminent are not sufficient to invoke the exception to § 1915(g).” *Id.* (quoting *Niebla v. Walton Corr. Inst.*, No. 3:06-cv-275-LAC-EMT, 2006 WL 2051307 at *2 (N.D. Fla. July 20, 2006)).

At least three of Lawrence Edward Thompson’s prior civil actions or appeals, each filed when he was incarcerated, have been dismissed as frivolous. *See Thompson v. Hammers*, No. 9:93-cv-078 (E.D. Tex. 2000) (dismissed as frivolous on December 27, 2000); *Thompson v. Kyle*, No. 95-50233 (5th Cir. 1996) (dismissed as frivolous on January 17, 1996); *Thompson v. Collins*, No. 4:93-cv-2004 (S.D. Tex. 1994) (dismissed as frivolous on January 7, 1994); *see also Thompson v. Houston Police Dep’t*, No. 4:17-cv-2138 (S.D. Tex. July 18, 2018) (dismissed as barred by three strikes); *Thompson v. Harris*, No. 9:00-cv-268 (E.D. Tex. Nov. 8, 2000) (dismissed as barred by three strikes—see letter from the United States Court of Appeals for the Fifth Circuit stating that Thompson is barred by three strikes and has been sanctioned (ECF No. 17)).

In the instant case, Plaintiff has not set forth any specific factual allegation that could show he is under imminent danger of serious physical injury. His disagreement with the nature of the medical care provided at the Allred Unit is insufficient to invoke the imminent danger exception to § 1915(g). Therefore, Plaintiff must pay the \$402.00 filing and administrative fees if he wishes to proceed with this action.

The Court notes that the medical care claims presented in the instant case are essentially the same as those presented by Thompson in his recent case, *Thompson v. Lumpkin*, No. 4:22-cv-

786 (S.D. Tex. 2022). That case was filed on March 2, 2022 and voluntarily dismissed on April 14, 2022. In his "Motion for Voluntary Dismissal," filed on March 30, 2022, Thompsons states that he is barred by three strikes and that he is unable to show imminent danger of serious physical injury resulting from inadequate medical care. *See Thompson v. Lumpkin*, No. 4:22-cv-786 (S.D. Tex. 2022, ECF No. 5). The instant complaint was filed on March 11, 2022, only a few weeks prior to Thompson's admission that he could not show imminent danger resulting from the alleged inadequate medical care.

For the foregoing reasons, Thompson's Motion for Leave to Proceed *In Forma Pauperis* (ECF No. 1) is **DENIED** and this action is **DISMISSED** without prejudice as barred by the three strikes provision of 28 U.S.C. § 1915(g). *See Brown v. Megg*, 857 F.3d 287 (5th Cir. 2017); *Adepegba v. Hammons*, 103 F.3d 383 (5th Cir. 1996), *abrogated in part on other grounds by Coleman v. Tollefson*, 575 U.S. 532, 537-38 (2015). Plaintiff may reopen this case by filing a motion to reopen and paying the \$402.00 filing and administrative fees within thirty days of the date of this order.¹

SO ORDERED this 31st day of May, 2022.


Reed O'Connor
UNITED STATES DISTRICT JUDGE

¹ To the extent that Plaintiff presents medical care claims arising during his confinement in the Holliday Unit in Huntsville, Texas, the Northern District of Texas is not the appropriate venue. Plaintiff may seek leave to file suit in the Southern District of Texas where the Holliday Unit is located.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION

LAWRENCE EDWARD THOMPSON,
TDCJ No. 408167,

Movant,

v.

ALLRED UNIT,

Respondent.

§
§
§
§
§
§
§
§
§

Civil Action No. 7:22-cv-018-O

JUDGMENT

This action came on for consideration by the Court, and the issues having been duly considered and a decision duly rendered,

It is **ORDERED, ADJUDGED, and DECREED** that Lawrence Edward Thompson's Motion for Leave to Proceed *In Forma Pauperis* (ECF No. 1) is **DENIED** and this action is **DISMISSED** without prejudice.

SIGNED this 31st day of May, 2022.


Reed O'Connor
UNITED STATES DISTRICT JUDGE