

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

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No: 22-3276

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Gary Leon Webster

Plaintiff - Appellant

v.

John Thurston, Arkansas Secretary of State

Defendant - Appellee

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Appeal from U.S. District Court for the Eastern District of Arkansas - Northern  
(3:22-cv-00232-JM)

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**JUDGMENT**

Before COLLOTON, SHEPHERD and KOBES, Circuit Judges.

The court has reviewed the original file of the United States District Court. The appeal is dismissed for failure to pay the filing fee or establish eligibility under 28 U.S.C. § 1915(g).

The motions to proceed in forma pauperis are denied. The full \$505 appellate filing and docketing fees are assessed against the appellant. The court remands the assessment and collection of those fees to the district court.

December 07, 2022

Order Entered at the Direction of the Court:  
Clerk, U.S. Court of Appeals, Eighth Circuit.

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/s/ Michael E. Gans

**UNITED STATES COURT OF APPEALS  
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**ORDER**

The petition for rehearing by the panel is denied.

January 24, 2023

Order Entered at the Direction of the Court:  
Clerk, U.S. Court of Appeals, Eighth Circuit.

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/s/ Michael E. Gans

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
NORTHERN DIVISION**

**GARY LEON WEBSTER  
ADC #114018**

**PLAINTIFF**

**v.**

**CASE NO. 3:22-cv-00232-JM**

**JOHN THURSTON, Arkansas  
Secretary of State**

**DEFENDANT**

**ORDER**

Plaintiff Gary Leon Webster, currently in custody at Tucker Unit of the Arkansas Division of Correction, filed a *pro se* complaint pursuant to 42 U.S.C. § 1983 (Doc. 2), along with an application to proceed *in forma pauperis* (“IFP motion”) (Doc. 1).

Because Webster’s complaint must be dismissed, without prejudice, pursuant to the three-strikes provision of the Prison Litigation Reform Act (“PLRA”), he is not entitled to *in forma pauperis* status. Accordingly, his IFP Motion (Doc. 1) is denied.

Under the three-strikes provision of the PLRA, a prisoner’s *in forma pauperis* action must be dismissed, *sua sponte* or upon a motion of a party, 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.” 28 U.S.C. § 1915(g). The Eighth Circuit has upheld the constitutionality of the three-strikes provision. *Higgins v. Carpenter*, 258 F.3d 797, 801 (8th Cir. 2001).

Records in the office of the Clerk of Court for the Eastern District of Arkansas reveal that Webster has had three prior civil actions dismissed for failure to state a claim upon which relief may be granted. See *Webster v. Does*, 3:19-CV-00059 DPM (E.D. Ark.); *Webster v. Pigg*, 3:19-

CV-00060 DPM (E.D. Ark.); *Webster v. Day Inn Motels, Inc., et al.*, 3:19-CV-00078 DPM (E.D. Ark.). Webster nonetheless may proceed *in forma pauperis* if he establishes that he is in imminent danger of serious physical injury. *See* 28 U.S.C. § 1915(g); *Ashley v. Dilworth*, 147 F.3d 715, 717 (8th Cir. 1998).

Webster sues Arkansas Secretary of State John Thurston complaining that he unlawfully took checks sent to him by the Department of Treasury. (Doc. 2 at 4). Webster has not complained that he is in imminent danger of serious physical injury. The imminent danger exception “focuses on the risk that the conduct complained of threatens continuing or future injury . . . .” *Martin v. Shelton*, 319 F.3d 1048, 1050 (8th Cir. 2003). Because Webster’s pleadings do not indicate imminent danger, that exception does not apply. *Dilworth*, 147 F.3d at 717.

IT IS THEREFORE ORDERED THAT:

1. Webster’s complaint is DISMISSED WITHOUT PREJUDICE. Should he wish to continue this case, Webster must submit the statutory filing and administrative fees of \$402 to the Clerk of the Court, noting the above case style number, within thirty (30) days of the entry date of this order, along with a motion to reopen the case. Upon receipt of the motion and full payment, this case will be reopened.
2. Webster’s IFP Motion (Doc. 1) is DENIED.
3. It is CERTIFIED that an *in forma pauperis* appeal from this order or any judgment entered hereunder would not be taken in good faith.

IT IS SO ORDERED this 6th day of September, 2022.

  
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
NORTHERN DIVISION**

**GARY LEON WEBSTER  
ADC #114018**

**PLAINTIFF**

**v.**

**CASE NO. 3:22-cv-00232-JM**

**JOHN THURSTON, Arkansas  
Secretary of State**

**DEFENDANT**

**JUDGMENT**

Consistent with the Order that was entered on September 6, 2022, it is considered, ordered, and adjudged that this case is hereby DISMISSED without prejudice.

IT IS SO ADJUDGED this 19th day of September, 2022.

John  
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
NORTHERN DIVISION**

**GARY LEON WEBSTER  
ADC #114018**

**PLAINTIFF**

**v.**

**CASE NO. 3:22-cv-00232-JM**

**JOHN THURSTON, Arkansas  
Secretary of State**

**DEFENDANT**

**ORDER**

Plaintiff Gary Webster, who is currently in custody at the Tucker Unit of the Arkansas Division of Correction, moves for leave to appeal *in forma pauperis*. (Doc. 9). However, because in the Order and Judgment dismissing the case I certified that any appeal would be frivolous and not in good faith (Doc. 3), the motion will be denied.

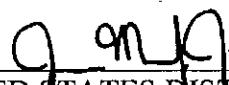
**IT IS THEREFORE ORDERED THAT:**

1. Mr. Webster's motion to appeal *in forma pauperis* (Doc. 9) is DENIED. Within thirty (30) days of this order's entry date, Mr. Webster must either:

- (a) pay to this Court the \$505.00 appellate filing and docketing fees; or
- (b) file, with the United States Court of Appeals for the Eighth Circuit, a motion with an attached affidavit that complies with each mandate of Federal Rule of Appellate Procedure 24(a)(1).

2. Mr. Webster is directed to file any future documents or pleadings related to his appeal with the United States Court of Appeals for the Eighth Circuit.

Dated this 31st day of October 2022.

  
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UNITED STATES DISTRICT JUDGE