

Case No. 24-5408

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

ORDER

RICKEY BENSON

Plaintiff - Appellant

v.

CHIEF JAILOR KIRK FIELDS and Subordinates

Defendant - Appellee

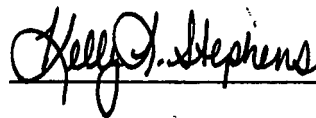
Appellant having previously been advised that failure to satisfy certain specified obligations would result in dismissal of the case for want of prosecution and it appearing that the appellant has failed to satisfy the following obligation(s):

The proper fee was not paid by February 10, 2025.

It is therefore **ORDERED** that this cause be, and it hereby is, dismissed for want of prosecution.

**ENTERED PURSUANT TO RULE 45(a),
RULES OF THE SIXTH CIRCUIT**
Kelly L. Stephens, Clerk

Issued: March 06, 2025





**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

RICKEY BENSON,

Plaintiff,

vs.

CHIEF JAILER KIRK FIELDS,

Defendant.

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No. 2:24-cv-2109-SHM-tmp

**ORDER DISMISSING COMPLAINT (ECF NO. 1) PURSUANT TO 28 U.S.C. § 1915(g);
AND DENYING MOTION TO PROCEED *IN FORMA PAUPERIS* (ECF NO. 2)**

On February 16, 2024, Rickey Benson, who is a three-strike filer under § 1915(g) of the Prison Litigation Reform Act, 28 U.S.C. §§ 1915, *et seq.* (the “PLRA”), filed: (1) a *pro se* civil complaint under 42 U.S.C. § 1983 (ECF No. 1); and (2) a motion for leave to proceed *in forma pauperis* (ECF No. 2 (the “IFP Motion”)). At the time Benson filed the complaint, he was incarcerated at the Shelby County Jail (the “SCJ”), in Memphis, Tennessee. (ECF No. 1 at PageID 1.)

Before the Court are: (1) the complaint (ECF No. 1); and (2) the IFP Motion (ECF No. 2). For the reasons explained below: (1) the complaint (ECF No. 1) is DISMISSED; and (2) the IFP Motion (ECF No. 2) is DENIED.

I. LEGAL STANDARD

Under the PLRA, a prisoner bringing a civil action must pay the full civil filing fee. The PLRA merely provides the prisoner the opportunity to make a “down payment” of a partial filing fee and pay the remainder in installments. 28 U.S.C. § 1915(b)(2); *see also McGore v.*

Wrigglesworth, 114 F.3d 601, 604 (6th Cir. 1997) (“[w]hen an inmate seeks pauper status, the only issue is whether the inmate pays the entire fee at the initiation of the proceeding or over a period of time under an installment plan. Prisoners are no longer entitled to a waiver of fees and costs”), *partially overruled on other grounds by LaFountain v. Harry*, 716 F.3d 944, 951 (6th Cir. 2013).

Not all indigent prisoners are entitled to take advantage of the installment payment provisions of § 1915(b). Section 1915(g) provides as follows:

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.

“Such a litigant cannot use the period payment benefits of § 1915(b). Instead, he must make full payment of the filing fee before his action may proceed.” *In re Alea*, 286 F.3d 378, 380 (6th Cir. 2002). The Sixth Circuit has upheld the constitutionality of this provision. *Wilson v. Yaklich*, 148 F.3d 596, 602-06 (6th Cir. 1998).

II. ANALYSIS

Benson has filed at least three previous civil actions in federal court that were dismissed for failure to state a claim or as frivolous.¹ Benson may not file any further action in which he

¹ See *Benson v. Luttrell, et al.*, No. 08-2825-JPM-dkv (W.D. Tenn. Jan. 9, 2009) (dismissed for failure to state a claim), *aff’d*, No. 09-5145 (6th Cir. Nov. 4, 2009); *Benson v. Luttrell, et al.*, No. 07-2790-SHM (W.D. Tenn. Sept. 11, 2008) (dismissed for failure to state a claim), *appeal dismissed*, No. 08-6277 (6th Cir. July 20, 2009), *cert. denied*, 130 S. Ct. 411 (2009); and *Benson v. Luttrell, et al.*, No. 04-2507-JPM-tmp (W.D. Tenn. Oct. 26, 2004) (dismissed for failure to state a claim); see also *Benson v. Fields*, No. 22-2413-SHM-tmp (W.D. Tenn. Feb. 17, 2023) (after Benson’s appeal to the United States Court of Appeals for the Sixth Circuit was dismissed for failure to pay the filing fee, the District Court dismissed Benson’s § 1983 case with prejudice for failure to pay the District Court’s filing fee); *Benson v. Fields*, No. 22-2449-SHM-tmp (W.D. Tenn. Mar. 1, 2023) (dismissing case with prejudice pursuant to 28 U.S.C. § 1915(g), notifying Benson of the Court’s strike recommendation, and entering judgment).

proceeds *in forma pauperis* unless he first demonstrates that he is under imminent danger of serious physical injury. *See, e.g., Vandiver v. Prison Health Servs., Inc.*, 727 F.3d 580, 585 (6th Cir. 2013) (requiring allegations that “describe with sufficient detail why the prisoner is in imminent danger”).

The assessment of whether a prisoner is in imminent danger is made at the time the complaint is filed. *See, e.g., Vandiver v. Vasbinder*, 416 F. App’x 560, 561-62 (6th Cir. 2011); *Rittner v. Kinder*, 290 F. App’x 796, 797-98 (6th Cir. 2008).

In the complaint, Benson alleges that, in response to his grievance about “flies and bed bugs” in his cell at the SCJ, he and another inmate were transferred from 2-N-pod to 2-F-pod on February 6, 2024 so that his cell could “be sprayed.” (ECF No. 1 at PageID 1 (the “Insect Remediation”).) Benson alleges that, during the Insect Remediation, “[SCJ Chief Jailer Kirk] Fields and subordinates showed personal animosity, conspired and retaliated to intentionally subject me to mental anguish and place me under imminent danger of serious physical injury by allowing the inmate workers to come in my cell and steal my personal hygiene items that I ordered from commissary, my indigent underclothes, and my ibuprofen for my hernia” (referred to as the “Personal Property Removal”). (*Id.*) Benson also alleges that “inmate workers stated that they will stab me to death when I go to court or poison my food if I file a grievance or lawsuit about the theft of my property when I returned to my cell.” (*Id.* (referred to as the “Alleged Verbal Harassment”).) Benson does not allege that his Personal Property should have remained in his cell during the “spray[ing]” of the Insect Remediation. (*See id.*)

Benson sues “Chief Jailer Fields and his subordinates in their official capacities.” (*Id.* at PageID 1.) Benson seeks (1) ten thousand dollars (\$10,000.00) or (2) “an alternate dispute resolution of a settlement among me and the defendant(s) for \$1,000.” (*Id.* at PageID 1-2.)

Benson's allegations in the complaint do not rise to the level of imminent danger of serious physical injury within the meaning of § 1915(g).

First, to satisfy the imminent danger exception, a prisoner must allege that a threat or prison condition is "real and proximate *and the danger of serious physical injury must exist at the time the complaint is filed.*" *Rittner*, 290 F. App'x at 797-98 (emphasis added) (internal quotation marks omitted). The Alleged Verbal Harassment and the Personal Property Removal do not satisfy this temporal requirement of "imminent danger" because: (1) Benson does not contend that SCJ inmate-workers persist in threatening him (*see* ECF No. 1 at PageID 1); and (2) Benson contends that the Personal Property Removal occurred on February 6, 2024. (*Id.* at PageID 1.) Benson filed the complaint ten (10) days later. (*See id.*) An allegation of past danger does not invoke the imminent danger exception of § 1915(g). *Vandiver*, 727 F.3d at 585 ("a prisoner's assertion that he or she faced danger in the past is insufficient to invoke the exception"); *Taylor v. First Med. Mgmt.*, 508 F. App'x 488, 491 (6th Cir. 2012) (same); *Percival v. Gerth*, 443 F. App'x 944, 946 (6th Cir. 2011) (same). Benson does not allege that the deprivation of his Personal Property on February 6, 2024 is ongoing. He does not claim that, when he filed the complaint, he had no personal hygiene items, undergarments, or ibuprofen.

Second, the Personal Property Removal and the Alleged Verbal Harassment do not satisfy the "serious physical injury" requirement of § 1915(g). Benson does not allege that he suffered physical harm from the Personal Property Removal or the Alleged Verbal Harassment. (ECF No. 1 at PageID 1.) Benson contends instead that he experienced "mental anguish" due to the Personal Property Removal. (*Id.*) As to the Alleged Verbal Harassment, the use of harassing language by a prison official, although unprofessional and deplorable, does not typically rise to constitutional dimensions. *See Ivey v. Wilson*, 882 F.2d 950, 954-55 (6th Cir. 1987); *see also Johnson v.*

Dellatifa, 357 F.3d 539, 546 (6th Cir. 2004) (harassment and verbal abuse do not constitute the type of pain infliction that the Eighth Amendment prohibits). The Court does not condone the making of threats by “inmate workers.” (See ECF No. 1 at PageID 1.) However, despite SCJ inmate workers’ alleged threat to Benson, Benson does not claim that he suffered physical injury at the hands of those inmates or the hands of any Defendants. Benson’s allegations are not sufficiently “real and proximate.” See *Vandiver*, 727 F.3d at 585 (quoting *Rittner*, 290 F. App’x at 797); *George v. Dalton*, No. 1:23-cv-1370, 2024 WL 93360, at *3-4 (W.D. Mich. Jan. 9, 2024) (concluding that § 1915(g) barred the plaintiff, who was a three-strike filer under § 1915(g), from proceeding *pro se* where the plaintiff alleged the defendant “made a statement that Plaintiff was going to ‘kill [Plaintiff] and his family’”); *Tucker v. Kinsella*, No. 2:23-cv-226, 2023 WL 8713097, at *4 (W.D. Mich. Dec. 18, 2023) (“allegations regarding ‘death threats’ suggest that while incarcerated, Plaintiff was verbally harassed by some Defendants; however, they fail to support an inference that Plaintiff was in imminent danger of serious physical injury within the meaning of § 1915(g)”); *Tucker v. Kemp*, No. 2:22-cv-205, 2023 WL 2155484, at *5 (W.D. Mich. Feb. 22, 2023) (same).

The Court, therefore, finds that Benson has not alleged or demonstrated that he is in “imminent danger of serious physical injury.” Benson’s complaint does not come within the exception to 28 U.S.C. § 1915(g). He does not allege facts demonstrating that, when he filed the complaint (ECF No. 1) on February 16, 2024, he was in imminent danger of serious physical injury as a result of the Personal Property Removal or the Alleged Verbal Harassment.

For the reasons explained above: (1) Benson’s complaint (ECF No. 1) is DISMISSED WITHOUT PREJUDICE, pursuant to 28 U.S.C. § 1915(g); and (2) the IFP Motion (ECF No. 2) is DENIED. The Court will re-open this case on a motion that (1) shall be filed by Benson

WITHIN TWENTY-EIGHT (28) DAYS and (2) is accompanied by the FOUR HUNDRED AND FIVE DOLLAR (\$405.00) CIVIL FILING FEE. If Benson fails to timely comply, this case will be dismissed with prejudice and judgment entered without further notice.

IT IS SO ORDERED, this 9th day of April, 2024.

Samuel H. Mays, Jr.
SAMUEL H. MAYS, JR.
UNITED STATES DISTRICT JUDGE

Case No. 24-5805

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

ORDER

RICKEY BENSON

Plaintiff - Appellant

v.

CHIEF JAILER KIRK FIELDS, and Subordinates

Defendant - Appellee

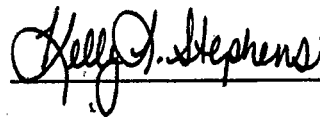
Appellant having previously been advised that failure to satisfy certain specified obligations would result in dismissal of the case for want of prosecution and it appearing that the appellant has failed to satisfy the following obligation(s):

The proper fee was not paid by February 18, 2025.

It is therefore **ORDERED** that this cause be, and it hereby is, dismissed for want of prosecution.

**ENTERED PURSUANT TO RULE 45(a),
RULES OF THE SIXTH CIRCUIT**
Kelly L. Stephens, Clerk

Issued: March 20, 2025





**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

RICKEY BENSON,

Plaintiff,

VS.

CHIEF JAILER KIRK FIELDS AND
SUBORDINATES,

Defendants.

No. 2:23-cv-2582-SHM-tmp

**ORDER DISMISSING CASE;
CERTIFYING THAT AN APPEAL WOULD NOT BE TAKEN IN GOOD FAITH;
NOTIFYING BENSON OF THE APPELLATE FILING FEE;
NOTIFYING BENSON OF THE COURT'S STRIKE RECOMMENDATION UNDER
28 U.S.C. § 1915(g); AND CLOSING CASE**

On September 14, 2023, Rickey Benson, who is a three-strike filer under § 1915(g) of the Prison Litigation Reform Act, 28 U.S.C. §§ 1915, *et seq.* (the “PLRA”), filed: (1) a *pro se* civil complaint under 28 U.S.C. § 1983 (ECF No. 1); (2) a motion to proceed *in forma pauperis* (ECF No. 2 (the “IFP Motion”)); and (3) “motion(s) for the Court to order [an] F.B.I. investigat[ion] [of] cells at Shelby County Jail [the “SCJ”].” (ECF No. 3) On April 9, 2024, the Court (1) dismissed the complaint without prejudice pursuant to 28 U.S.C. § 1915(g). (ECF No. 9 (the “April 9 Order”).) The Court notified Benson that the case would be re-opened if Benson filed a motion to re-open within twenty-eight (28) days, accompanied by the four hundred and five dollar (\$405.00) civil filing fee. (*Id.* at PageID 23.) The Court warned Benson that if he failed to timely comply, the case would be dismissed with prejudice and judgment entered without further notice. (*Id.*)

On April 19, 2024, Benson filed a notice of appeal about the April 9 Order with the United States Court of Appeals for the Sixth Circuit. (ECF No. 10 (the "NOA").) On August 1, 2024, the Sixth Circuit entered an order that dismissed Benson's appeal for want of prosecution. (ECF No. 12 at PageID 30.)

Benson's deadline to file a motion to re-open Case No. 23-2582 and submit the civil filing fee was Tuesday, May 7, 2024. (See ECF No. 9 at PageID 23.) Benson has not filed a motion to re-open the case and has not sought an extension of time to do so.

For these reasons, the Court DISMISSES this case with prejudice in its entirety for the reasons discussed in the April 9 Order. (ECF No. 9.) Judgment will be entered in accordance with the April 9 Order.

The Court RECOMMENDS that this dismissal should be treated as a strike pursuant to 28 U.S.C. § 1915(g). See *Simons v. Washington*, 996 F.3d 350, 353 (6th Cir. 2021).

Pursuant to Federal Rule of Appellate Procedure 24(a) and 28 U.S.C. § 1915(a)(3), it is CERTIFIED that any appeal in this matter by Benson would not be taken in good faith. If Benson nevertheless chooses to file a notice of appeal, Benson must either pay the entire six hundred and five dollars (\$605.00) appellate filing fee or submit a new *in forma pauperis* affidavit and a current, certified copy of his inmate trust account statement for the last six months, in compliance with 28 U.S.C. §§ 1915(a)-(b).

The Clerk is directed to mark this case closed.

IT IS SO ORDERED, this 9th day of August, 2024.

/s/ Samuel H. Mays, Jr.

SAMUEL H. MAYS, JR.

UNITED STATES DISTRICT JUDGE