

UNPUBLISHED

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

No. 19-6177

DAVID MEYERS,

Plaintiff - Appellant,

v.

J. D. BENTLEY; SGT. J. B. HALL; J. FANNIN; M. L. COUNTS; WALTER SWINEY; C. R. STANLEY; F. STANLEY; A. CLEVINGER; OFFICER STANLEY; JR. OFFICER WELLS; SGT. WILLIAMS; C. STALLARD; GERALDINE BAKER BAKER; OFFICER GWEN; MAJOR TATE; CAPTAIN D. STILL; CAPTAIN BLEVINS; OFFICER MCCOWAN; J. B. MESSER; S. ESCOFFERY; T. DORTON; FL. OFFICER LEWIS; SGT. MEADE; MARCUS ELAM; A. DAVID ROBINSON; PAUL HAYMES; HENRY PONTON; S. BRYAN; CURTIS PARR; P. SYKES; J. GIBSON; J. ARTRIP; DR. EDWARD BONKYE; KAREN STAPLETON; J. BLEDSOE; DR. FOX; C. DICKENSON; OFFICER CATERON; OFFICER BENTLEY,

Defendants - Appellees.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. James P. Jones, District Judge. (7:18-cv-00051-JPJ-PMS)

Submitted: June 13, 2019

Decided: June 25, 2019

Before NIEMEYER, MOTZ, and KING, Circuit Judges.

Dismissed by unpublished per curiam opinion.

David Meyers, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

David Meyers, a Virginia inmate, has filed a notice of appeal. While we grant Meyers' motion for leave to proceed without prepayment of fees under the Prison Litigation Reform Act (PLRA), we dismiss the appeal for lack of jurisdiction.

Because is it uncontested that Meyers has had three civil actions or appeals dismissed as frivolous, malicious, or for failure to state a claim, he must show that he is in imminent danger of serious physical injury in order to proceed in a civil action or appeal without prepayment of the filing fees. *See* 28 U.S.C. § 1915(g) (2012). We have considered Meyers' allegations and conclude that he has sufficiently shown that he is in imminent danger of serious physical injury and he may proceed under the PLRA without prepayment of fees.

“The effect of a notice of appeal is determined at the time it is filed.” *Trinidad Corp. v. Maru*, 781 F.2d 1360, 1362 (9th Cir. 1986). A proper notice of appeal is filed “after the entry of the judgment or order appealed from.” Fed. R. App. P. 4(a)(1)(A). Here, Meyers seeks to appeal an order denying his motion to seal. When Meyers filed the notice of appeal, there was no order denying a motion to seal, nor was there a pending motion to seal. There being no appealable order when the appeal was filed, we dismiss the appeal for lack of jurisdiction.

Accordingly, we grant leave to proceed without prepayment of fees under the PLRA, but dismiss the appeal for lack of jurisdiction. We also deny Meyers' motion for injunctive relief. We dispense with oral argument because the facts and legal contentions

are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED