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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>GUSTAVO McKENZIE,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>R. CASILLAS; et al.,</p> <p>Defendants - Appellees.</p>

No. 13-56742

D.C. No. 3:12-cv-01602-BEN-RBB

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Roger T. Benitez, District Judge, Presiding

Submitted September 23, 2014**

Before: W. FLETCHER, RAWLINSON, and CHRISTEN, Circuit Judges.

California state prisoner Gustavo McKenzie appeals pro se from the district court's order dismissing his 42 U.S.C. § 1983 action for failure to pay the required filing fee after revoking his in forma pauperis status under 28 U.S.C. § 1915(g).

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

We have jurisdiction under 28 U.S.C. § 1291. We review de novo the interpretation and application of § 1915(g), *Andrews v. Cervantes*, 493 F.3d 1047, 1052 (9th Cir. 2007), and for an abuse of discretion a denial of leave to proceed in forma pauperis, *O’Loughin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990). We affirm.

The district court did not abuse its discretion by revoking McKenzie’s in forma pauperis status because McKenzie has three strikes under § 1915(g), and failed to allege that he was under imminent danger of serious physical injury. *See Andrews v. King*, 398 F.3d 1113, 1116 n.1 (9th Cir. 2005) (if three of a prisoner’s prior federal actions or appeals were dismissed as frivolous, malicious, or for failure to state a claim, they count as “strikes” under § 1915(g), and the prisoner cannot proceed in forma pauperis unless he or she is under imminent danger of serious physical injury). Moreover, contrary to McKenzie’s contention, this court’s denial of McKenzie’s application to proceed in forma pauperis in a prior appeal counts as a separate strike from the district court’s order denying his application to proceed in forma pauperis in the underlying action. *See id.* (dismissals for failure to state a claim of a prisoner’s prior federal actions or appeals counts as “strikes” under § 1915(g)).

AFFIRMED.