

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

GREGORY LEE McCALL
REG #15064-045

PLAINTIFF

V.

NO: 2:12CV00066 JMM/HDY

USA *et al.*

DEFENDANTS

ORDER

Plaintiff Gregory Lee McCall, currently incarcerated at the Victorville Federal Correctional Institution in Adelanto, California, filed a *pro se* complaint (docket entry #1), pursuant to 42 U.S.C. § 1983, on April 13, 2012. Plaintiff did not pay the \$350.00 filing fee or file an application for leave to proceed *in forma pauperis*. Because the fee was not paid, and Plaintiff is not entitled to *in forma pauperis* status, his complaint must be dismissed.

Under the three-strikes provision of the Prison Litigation Reform Act (“PLRA”), a prisoner may not bring a civil action *in forma pauperis* if he 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 explicitly upheld the constitutionality of the three-strikes provision. *Higgins v. Carpenter*, 258 F.3d 797 (8th Cir. 2001).

Court records reveal that Plaintiff has had at least three prior civil actions dismissed as frivolous or for failure to state a claim upon which relief may be granted.¹ Plaintiff’s three strikes

¹See *McCall v. Johnson Cnty. Sheriff Dep’t.*, 5:02CV03184 GTV (D.Kan.); *McCall v. Keefe Supply Co.*, 5:02CV3185 GTV (D. Kan.); *McCall v. Whipple*, 4:03CV00015 FJG (W.D. Mo.).

have previously been recognized in this district. *See McCall v. USA et al.*, ED/AR No. 2:12CV00032. The Court additionally finds, based on the allegations contained in Plaintiff's present complaint, that he is not in imminent danger of serious physical injury. Specifically, Plaintiff asserts that guards burned one of his meals in a microwave, and cursed him, when he was incarcerated at the Federal Correctional Institution in Forrest City. Plaintiff is now incarcerated in California, and his allegations suggest no danger of serious physical injury.

IT IS THEREFORE ORDERED THAT:

1. Plaintiff's complaint is DISMISSED WITHOUT PREJUDICE. Should Plaintiff wish to continue this case, he must submit the statutory filing fee of \$350.00 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. The Court additionally certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal from this order or any judgment entered hereunder, would not be taken in good faith.

DATED this 16th day of April, 2012.


UNITED STATES DISTRICT JUDGE