

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

FREDERICK BANKS  
ADC #05711-068

PLAINTIFF

v. NO. 2:12CV00139 JLH/HDY

T.C. OUTLAW, Warden,  
FCI-Forrest City

DEFENDANT

**ORDER**

Plaintiff Frederick Banks, currently incarcerated at the Federal Correctional Institution in Forrest City, filed a *pro se* complaint (docket entry #1), along with an application for leave to proceed *in forma pauperis* (docket entry #2), on July 9, 2012.

Because Plaintiff's complaint must be dismissed, without prejudice, pursuant to the three-strikes provision of the Prison Litigation Reform Act ("PLRA"), Plaintiff's application for leave to proceed *in forma pauperis* will be denied.

Under the three-strikes provision of the 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).

Plaintiff is ineligible for *in forma pauperis* status because he has had more than three cases dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted. *See Banks v. U.S. Marshal*, 274 Fed. Appx. 631 (10th Cir. 2008) (unpublished). Plaintiff's three strike

status has been recognized in this district as well. *See Banks v. Clinton*, ED/AR 4:12CV00183.<sup>1</sup> 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 he was denied breakfast on June 29, 2012, because the breakfast line closed before the pill line. Such claims do not describe imminent danger of serious physical injury.

IT IS THEREFORE ORDERED THAT:

1. Plaintiff's application for leave to proceed *in forma pauperis* (docket entry #2) is DENIED, and 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 19th day of July, 2012.



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UNITED STATES DISTRICT JUDGE

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<sup>1</sup> In *Banks v. Clinton*, the United States Court of Appeals for the Eighth Circuit ruled that, under the provisions of the PLRA, Plaintiff could not proceed with an appeal of the dismissal of that case until he paid the full filing fees.