

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

DEMETRIUS FLOWERS
aka Malcolm X

PLAINTIFF

V.

3:08CV00148 SWW/HDY

G. BEAVERS, Jailer, Craighead County Detention
Facility; and RICK GOODMAN

DEFENDANTS

ORDER

Plaintiff, who appears to now be a post-trial detainee at the Craighead County Detention Facility, filed a *pro se* Complaint (docket entry #1), pursuant to 42 U.S.C. § 1983. For the reasons stated below, the Court orders that Plaintiff's claims be dismissed, pursuant to the three-strikes provision of the Prison Litigation Reform Act ("PLRA").

Under the three-strikes provision of the PLRA, the Court must dismiss a prisoner's *in forma pauperis* action at any time, *sua sponte* or upon a motion of a party, if it determines that 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." 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).

The Court's records demonstrate that he has previously filed three § 1983 actions that were

dismissed for failing to state a claim upon which relief may be granted.¹ Accordingly, the Court concludes that Plaintiff has accumulated three strikes, as defined by § 1915(g).

Furthermore, Plaintiff's allegation, that he was served a tray with pork and beans despite the Defendants being aware that he is a Muslim who does not consume pork, does not amount to a claim that he was or is in imminent danger. *See McAlphin v. Toney*, 281 F.3d 709 (8th Cir. 2002)(emphasizing that, to qualify for the imminent danger exception to the three-strikes provision, a plaintiff must allege facts establishing that he was in imminent danger of serious bodily injury at the time of filing the complaint).

For all these reasons,

IT IS THEREFORE ORDERED that Plaintiff's claims are DISMISSED WITHOUT PREJUDICE. Should Plaintiff, within ten (10) days of the date of entry of this Order, submit the statutory filing fee of \$350.00 to the Clerk of the Court, noting the case style and number, his case may be re-opened.

DATED this 12th day of September, 2008.

/s/Susan Webber Wright

UNITED STATES DISTRICT JUDGE

¹ *See Flowers v. Fogelman et al.*, 3:07CV00167 JMM (dismissed as frivolous); *Flowers et al. v. Kasomen et al.*, 3:08CV00065 JLH (dismissed for failure to state a claim); and *Flowers v. Wilson et al.*, 4:08CV00373 WRW (dismissed as frivolous).