

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

**RUBBY JAMES GRAY**

**PLAINTIFF**

v.

**No: 3:17-cv-00323 BSM-PSH**

**KEITH BOWERS, et al.**

**DEFENDANTS**

**ORDER**

Plaintiff Rubby James Gray filed a complaint pursuant to 42 U.S.C. § 1983 on December 5, 2017 (Doc. No. 1). He did not pay the required filing and administrative fees or file an application to proceed *in forma pauperis*. Gray is incarcerated at the Craighead County Detention Center. He is a “three-striker” under the three-strikes provision of the Prison Litigation Reform Act (“PLRA”). The following cases filed by Gray were dismissed for failure to state a claim: *Gray v. Kennemore*, No. 3:01-cv-00266-BRW; *Gray v. Bristrow*, 3:17-cv-00279-JLH; *Gray v. Black*, No. 3:17-cv-00293-BSM. The PLRA’s three-strikes provision states that a prisoner cannot proceed *in forma pauperis* in a civil action if:

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) (emphasis added). The U.S. Court of Appeals for the Eighth Circuit has explicitly upheld the constitutionality of the three-strikes provision. See *Higgins v. Carpenter*, 258 F.3d 797 (8th Cir. 2001). As a three-striker, Gray must show that he was in imminent danger of serious physical injury at the time he filed the complaint. 28 U.S.C. § 1915(g); *Ashley v. Dilworth*,

147 F.3d 715, 717 (8th Cir. 1998). The Eighth Circuit has clarified that the imminent danger exception applies only when there is a genuine risk of an “ongoing serious physical injury.” *Martin v. Shelton*, 319 F.3d 1048, 1050 (8th Cir. 2003).

To proceed with this lawsuit, Gray must pay the \$400.00 filing and administrative fees or return a completed IFP application, including an accompanying calculation sheet and certificate signed by an authorized official, within 30 days of the date of this order. The Clerk of Court is directed to enclose an IFP application along with a copy of this order. Additionally, in the event Gray files an IFP application, the Court will need more information to determine if Gray’s claims meet the imminent-danger exception to the PLRA’s three-strikes rule. Gray alleges he has been exposed to mold and is having breathing troubles and headaches. Doc. No. 1 at 3-4. Gray must amend his complaint within thirty days from the date of this Order to describe why he believes he is currently in danger of imminent serious physical injury. In the event Gray fails to comply with this Order within thirty days, the Court will recommend this case be dismissed.

IT IS SO ORDERED this 6th day of December, 2017.



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UNITED STATES MAGISTRATE JUDGE