

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

PATRICK L. SHERMAN
ADC #96304

PLAINTIFF

V.

5:07CV00194-WRW/HDY

ARKANSAS DEPARTMENT
OF CORRECTION *et al.*

DEFENDANTS

ORDER

Plaintiff, an inmate at the Tucker Maximum Security Unit of the Arkansas Department of Correction ("ADC"), filed a *pro se* complaint (docket entry #1), pursuant to 42 U.S.C. § 1983, on July 31, 2007, alleging that his good time is being improperly computed. Plaintiff did not pay the \$350.00 filing fee, nor file an application for leave to proceed *in forma pauperis*. Because Plaintiff's complaint must be dismissed, without prejudice, pursuant to the three-strikes provision of the Prison Litigation Reform Act ("PLRA"), there is no reason to allow Plaintiff a further opportunity to file an *in forma pauperis* application.

The Court is required to screen complaints seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A. Additionally, the PLRA provides that a prisoner may not bring an action *in forma pauperis* 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). The Eighth Circuit has explicitly upheld the constitutionality of the three-strikes provision. *Higgins v. Carpenter*, 258 F.3d 797 (8th Cir. 2001).

Records in the office of the Clerk of Court for the Eastern District of Arkansas reveal that Plaintiff has had at least three prior cases dismissed for failure to state a claim upon which relief may be granted.¹ 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. Accordingly, his complaint must be dismissed.

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, no later than 30 days after the entry 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 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 9th day of August, 2007.

/s/Wm. R. Wilson, Jr.
UNITED STATES DISTRICT JUDGE

¹See 5:96CV00365 *Sherman v. Rhode et al.*, 5:97CV00405 *Sherman v. Norris et al.*, 5:01CV00161 *Sherman v. Correctional Medical Services et al.*