

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

TERRANCE PROCTOR
ADC #87410

PLAINTIFF

V.

NO: 5:10CV00318 JMM/HDY

RANDALL E. MANUS *et al.*

DEFENDANTS

ORDER

Plaintiff, currently held at the Arkansas Department of Correction’s Varner Super Max Unit, filed a *pro se* complaint (docket entry #1), pursuant to 42 U.S.C. § 1983, on November 2, 2010. Plaintiff did not pay the \$350.00 filing fee, and he did not file an application for leave to proceed *in forma pauperis*. Because Plaintiff is not entitled to *in forma pauperis status*, his complaint must be dismissed.

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). 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 civil actions dismissed for failure to state a claim upon which

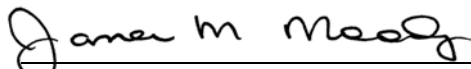
relief may be granted.¹

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. Specifically, Plaintiff alleges denial of due process, denial of equal protection, denial of liberty interests, conflict of interest, cruel and unusual punishment in the form of atypical hardship in segregation, and violation of his free speech rights. All of Plaintiff's claims are related to his assertion that he is being falsely disciplined and punished for his litigation activities. Such claims do not describe imminent 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 9th day of November, 2010.


UNITED STATES DISTRICT JUDGE

¹See *Proctor et al. v. Norris et al.*, ED/AR No. 5:00CV00097; *Proctor v. Spears et al.*, ED/AR No. 5:09CV00084; *Proctor v. White et al.*, ED/AR No. 5:09CV00172.