

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
HOT SPRINGS DIVISION

PATRICK SHERMAN

PLAINTIFF

v.

Case No. 6:15-cv-6122

COUNTY JUDGE BILL SCRIMSHIRE,  
*et al.*

DEFENDANTS

**ORDER**

Before the Court is the Report and Recommendation filed May 5, 2016, by the Honorable Mark E. Ford, United States Magistrate Judge for the Western District of Arkansas. ECF No. 9. Judge Ford recommends that Plaintiff Patrick Sherman's application to proceed *in forma pauperis* (IFP) be denied. Sherman has responded with objections. ECF No. 10. The Court finds the matter ripe for consideration.

Sherman is currently incarcerated in the Arkansas Department of Correction, Varner Supermax Unit. He files this civil rights action pursuant to 42 U.S.C. § 1983, and requests that he be granted IFP status. The magistrate judge recommends that Sherman's IFP application be denied pursuant to 28 U.S.C. § 1915(g).

Section 1915(g) limits the ability of a prisoner to obtain IFP status when he has filed at least three claims that have been dismissed as frivolous, malicious, or for failure to state a claim. 28 U.S.C § 1915(g). However, a prisoner who would otherwise be prohibited under this section from obtaining IFP status may proceed IFP if he is "under imminent danger of serious physical injury."<sup>1</sup> 28 U.S.C. §1915(g). This provision is commonly referred to as the "three strikes rule."

In the Report and Recommendation, the magistrate judge identifies three cases in which Sherman's complaint has been dismissed. The magistrate judge concludes that each of these

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<sup>1</sup> In this case, Sherman has not alleged any facts to indicate that he is under imminent danger of physical injury.

cases qualifies as a strike against Sherman under § 1915(g). One such case is *Farver v. Evans*, 2:01-cv-00224 (E.D. Ark. 2002), in which Sherman was identified as one of four plaintiffs. Sherman argues that the *Farver* case should not be considered a strike against him because he “never knew or had any idea that he was a [p]laintiff” in the *Farver* case. ECF No. 10, p. 5. The Court has reviewed the *Farver* case and is not convinced that it should be considered a strike as to Sherman. Nevertheless, Sherman has filed numerous cases in the Eastern and Western Districts of Arkansas, several of which have been dismissed as frivolous or for failure to state a claim. The Court has identified at least four cases in which Sherman’s IFP status was denied because of the three strikes rule: *Sherman v. Clark Cnty.*, 4:12-cv-00728 (E.D. Ark. 2012);<sup>2</sup> *Sherman v. Abernathy, et al.*, 5:10-cv-353 (E.D. Ark. 2011); *Sherman v. Wyatt*, 5:10-cv-00026 (E.D. Ark. 2010); *Sherman v. Ark. Dep’t of Corr.*, 5:02-cv-00339 (E.D. Ark. 2002). Each of the orders denying IFP status to Sherman identifies at least three cases that are considered strikes pursuant to §1915(g).<sup>3</sup> Because Sherman has had at least three complaints in cases other than *Farver* dismissed as frivolous or for failure to state a claim, the Court agrees with the magistrate judge that Sherman is not eligible for IFP status.

Accordingly, based on its own de novo review, the Court overrules Sherman’s objections and adopts the Report and Recommendation *in toto*. ECF No. 9. Sherman’s IFP application (ECF No. 2) is **DENIED**, and this case is **DISMISSED WITHOUT PREJUDICE** to Sherman’s right to re-open the case upon payment of the filing fee. Plaintiff is instructed to file a motion to reopen the action upon payment of the proper filing fee to the Clerk of Court.

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<sup>2</sup> The order denying IFP status to Sherman states that he has filed at least thirty-five lawsuits in the Eastern District of Arkansas.

<sup>3</sup> Some of these cases are as follows: *Sherman v. Rhode, et al.*, 5:96-cv-00365 (E.D. Ark. dismissed May 19, 1997); *Sherman v. Norris, et al.*, 5:97-cv-00405 (E.D. Ark. dismissed Aug. 3, 1998); *Sherman v. Corr, Medical Services, et al.*, 5:01-cv-00161 (E.D. Ark. dismissed Sep. 18, 2001). In addition, the Court has identified at least two cases in this district that have been dismissed as frivolous or for failure to state a claim: *Sherman v. Clark Cnty., et al.* 6:13-cv-06017 (W.D. Ark. dismissed June 27, 2013) and *Sherman v. Clark Cnty. Circuit Court, et al.*, 6:02-cv-06180 (W.D. Ark. dismissed November 5, 2002).

Further, the Clerk is directed to provisionally file any new action in which Patrick Sherman seeks to proceed IFP. The magistrate judge shall then review the action. If it is a civil action, rather than a criminal or habeas action, and if Sherman has not asserted a valid claim that he is under imminent danger of serious physical injury, the magistrate judge shall recommend that IFP status be denied.

**IT IS SO ORDERED**, this 16th day of August, 2016.

/s/ Susan O. Hickey  
Susan O. Hickey  
United States District Judge