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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANTONIO LUIS WILLIAMS,

Plaintiff,

v.

HAROLD TATE, et al.,

Defendants.

1:07-cv-00909-OWW-NEW (DLB) PC

ORDER VACATING ORDER GRANTING APPLICATION TO PROCEED IN FORMA PAUPERIS AND ORDER DIRECTING PAYMENT OF INMATE FILING FEE

(Docs. 5, 6)

ORDER DENYING PLAINTIFF'S MOTION TO PROCEED IN FORMA PAUPERIS AND REQUIRING PLAINTIFF TO PAY \$350.00 FILING FEE IN FULL WITHIN THIRTY DAYS OR THIS ACTION WILL BE DISMISSED

(Doc. 2)

Plaintiff Antonio Luis Williams ("plaintiff") is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on June 25, 2007, along with a motion to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(g). On July 2, 2007, the court issued orders granting plaintiff leave to proceed in forma pauperis and directing the California Department of Corrections to facilitate payment of the filing fee from plaintiff's prison trust account. Further review by the court reveals that plaintiff is not entitled to proceed in forma pauperis. Therefore, the courts orders shall be vacated, and plaintiff's motion to proceed in forma pauperis shall be denied.

1 28 U.S.C. § 1915 governs proceedings in forma pauperis. Section 1915(g) provides that “[i]n
2 no event shall a prisoner bring a civil action . . . under this section if the prisoner has, on 3 or more
3 prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court
4 of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state
5 a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious
6 physical injury.” Plaintiff has had three or more actions dismissed as frivolous, as malicious, or for
7 failing to state a claim upon which relief may be granted.¹ Thus, plaintiff is subject to 28 U.S.C. §
8 1915(g) and is precluded from proceeding in forma pauperis unless plaintiff is, at the time the
9 complaint is filed, under imminent danger of serious physical injury.

10 Plaintiff has alleged imminent danger. A review of plaintiff’s complaint reveals that the basis
11 for his claims in this action is a conspiracy by defendants to interfere with plaintiff’s medical care
12 by deliberately failing to enforce the physician’s surgical orders to repair plaintiff’s dislocated
13 shoulder. Plaintiff alleges that defendants transported him to Corcoran District Hospital for surgery,
14 but the surgery was not performed as ordered, leaving plaintiff in the same condition as before, in
15 pain, and unable to exercise. (Doc. 1, Comp., pgs. 4-7.) In the attached exhibits, plaintiff also
16 offers evidence of the alleged inadequate medical care of his shoulder. (*Id.*, pgs. 8-34.) However,
17 plaintiff has alleged no facts that support a finding that he is, at this time, under imminent danger of
18 serious physical injury. Therefore, plaintiff may not proceed in forma pauperis in this action, and
19 must submit the appropriate filing fee in order to proceed with this action.

20 Based on the foregoing, it is HEREBY ORDERED that:

- 21 1. Pursuant to 28 U.S.C. § 1915(g), plaintiff is ineligible to proceed in forma pauperis
22 in this action;
- 23 2. Plaintiff shall submit the \$350.00 filing fee in full within **thirty (30) days**;
- 24 3. The Clerk of Court is directed to serve a copy of this order on the Director of the
25 California Department of Corrections and Rehabilitation, 1515 S Street, Sacramento,

26
27 ¹ The Court takes judicial notice of 4:04-cv-00782-CW Williams v. McGrath, et al (N.D. Cal.) (dismissed
28 for failure to state a claim on 06/25/2004), 4:04-cv-02543-CW Williams v. Hagar, et al. (N.D. Cal.) (dismissed for
failure to state a claim on 11/10/2004), and 1:06-cv-01097-OWW-DLB Williams v. Wunderlich, et al. (E.D. Cal.)
(dismissed for failure to state a claim on 10/05/2006).

1 California 95814;

2 4. The Clerk of the Court is directed to serve a copy of this order on the Financial
3 Department, U.S. District Court, Eastern District of California, Fresno Division; and

4 5. If plaintiff fails to pay the \$350.00 filing fee in full within thirty days, this action will
5 be dismissed, without prejudice.

6 IT IS SO ORDERED.

7 **Dated: July 6, 2007**

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

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