

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

GUILLERMO TRUJILLO CRUZ,	Case No. 1:17-cv-01549-DAD-SKO (PC)
Plaintiff, v.	ORDER TO SHOW CAUSE WHY PLAINTIFF'S APPLICATION TO PROCEED IN FORMA PAUPERIS SHOULD NOT BE DENIED
R. LEYVA,	(Doc. 5)
Defendant.	TWENTY-ONE (21) DAY DEADLINE

Plaintiff, Guillermo Trujillo Cruz, is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the complaint in this action on November 20, 2017. (Doc. 1.) On November 21, 2017, Plaintiff was ordered to either file an application to proceed *in forma pauperis*, or pay the filing fee since he submitted neither with the Complaint. (Doc. 3.)

On December 4, 2017, Plaintiff filed an application to proceed *in forma pauperis*, which is currently before the Court. (Doc. 5.) It appears that Plaintiff's application to proceed *in forma pauperis* should be denied under 28 U.S.C. § 1915(g).

"In no event shall a prisoner bring a civil action . . . under this section 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 Court may take judicial notice of court records. *United States v. Howard*, 381 F.3d 873, 876 n.1 (9th Cir. 2004). Here, judicial notice is taken of *Trujillo*¹ v. *Sherman*, 1:14-cv-0140-BAM (PC), which was dismissed and closed on April 24, 2015, for failure to state a claim, affirmed by the Ninth Circuit on February 23, 2016; *Trujillo v. Ruiz, et al.*, 1:14-cv-0975-SAB, which was dismissed and closed on January 6, 2016, for failure to state a claim, affirmed by the Ninth Circuit on May 9, 2017; and *Trujillo v. Gonzalez-Moran, et al.*, which was dismissed and closed on January 19, 2017 (Plaintiff's appeal was dismissed by the Ninth Circuit as frivolous on July 28, 2017). Thus, Plaintiff had three strikes under §1915(g) before he filed this action on November 20, 2017.

Accordingly, the only way Plaintiff may proceed *in forma pauperis* in this action is if his allegations demonstrate he was under imminent danger of serious physical injury at the time this action was filed. Plaintiff alleges that the violation in this action occurred at High Desert State Prison ("HDSP"), and that Correctional Officer R. Leyva is employed at Kern Valley State Prison ("KVSP"). However, when Plaintiff filed this action, he was housed at Pelican Bay State Prison ("PBSP") in Crescent City, California. (*See* Doc. 1, p. 1.) The Complaint contains allegations regarding acts by Officer Leyva that occurred either at HDSP or KVSP. Plaintiff does not state any allegations of wrongdoing at PBSP and was not in imminent danger of serious physical injury at the time he filed suit, which precludes him from proceeding *in forma pauperis* in this action. *Andrews v. Cervantes*, 493 F.3d 1047, 1056-57 (9th Cir. 2007).

Plaintiff had three strikes under 28 U.S.C. §1915(g) before he filed this action. The allegations in this action do not establish that Plaintiff was facing imminent danger of serious physical injury at the time the Complaint was filed when he was housed at PBSP.

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¹ Plaintiff intermittently transposes his surnames in his legal filings, i.e "Trujillo Cruz" and "Cruz Trujillo." However, Plaintiff's identity in these prior actions was confirmed via his California Department of Corrections and Rehabilitation inmate number #AA-2974.

1	Accordingly, it is HEREBY ORDERED that, within twenty-one days of the date of	
2	service of this order, Plaintiff SHALL show cause why his application to proceed <i>in forma</i>	
3	pauperis status should not be denied. Alternatively, Plaintiff may file a notice of voluntary	
4	dismissal.	
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6	IT IS SO ORDERED.	
7	Dated: December 19, 2017	s Sheila K. Oberto
8		UNITED STATES MAGISTRATE JUDGE
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