

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

REMON SHIELDS,

Plaintiff,

No. CIV S-12-0126 CKD P

vs.

S.M. PHELPS, et al.,

Defendants.

ORDER

_____ /

Plaintiff, a California prisoner proceeding pro se, has filed a complaint alleging a violation of civil rights under 28 U.S.C. § 1983. Plaintiff has not, however, paid the \$350.00 filing fee. Good cause appearing, plaintiff will be granted 21 days within which to pay the filing fee. If the filing fee is not submitted to the court within 21 days, the court will recommend that this action be dismissed.

Ordinarily, plaintiff would have to option of filing an application to proceed in forma pauperis. However, plaintiff is precluded from proceeding in forma pauperis under 28 U.S.C. § 1915(g). That statute reads:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding [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

1 frivolous, malicious, or fails to state a claim upon which relief may
2 be granted, unless the prisoner is under imminent danger of serious
3 physical injury.

4 Court records reveal that plaintiff had at least three actions dismissed for failure to
5 state a claim upon which relief can be granted well before this action was commenced. Two of
6 those actions were in this court: 1) Shields v. Cal. Dep't of Corrections and Rehab., No. 2:02-cv-
7 0542 WBS JFM P, dismissed December 12, 2002; and 2) Shields v. Pliler, No. 2:02-cv-1150
8 GEB JFM P, dismissed October 7, 2003. The other was in the United States District Court for
9 the Central District of California: Shields v. Alameida, No. CV-03-808 AHM (Mc), dismissed
10 August 14, 2003.

11 Accordingly, plaintiff has “struck out” pursuant to 28 U.S.C. § 1915(g). Further,
12 the court has reviewed plaintiff’s complaint and finds there is no reasonable suggestion that
13 plaintiff is “under imminent danger of serious physical injury.” Plaintiff seeks an injunction
14 against the California Department of Corrections and Rehabilitation in which the court orders
15 prison officials to house plaintiff apart from members of prison gangs. Safety is only one of the
16 reasons alleged by plaintiff for seeking the injunction. To the extent safety is a concern, plaintiff
17 fails to allege that he has ever been subjected to violence from a gang member and, more
18 importantly, he fails to point to anything specific and non-conclusory which reasonably suggests
19 he is under imminent danger of serious physical injury as a result of his current housing
20 assignment or in any other respect. See Manago v. Gonzalez, No. 1:11-cv-1269 GBC (PC), 2012
21 WL 439404, at *2 (E.D. Cal. February 9, 2012) (“A prisoner seeking to invoke the imminent
22 danger exception . . . must make specific, credible allegation of imminent danger of serious
23 physical harm.”).

24 In accordance with the above, IT IS HEREBY ORDERED that:

25 1. Plaintiff is directed to pay the \$350 filing fee for this action within 21 days;

26 and

////

1 2. Failure to pay the filing fee will result in a recommendation that this action be
2 dismissed.

3 Dated: February 17, 2012

4 
5 _____
6 CAROLYN K. DELANEY
7 UNITED STATES MAGISTRATE JUDGE

8
9 ¹
10 shie0126.3ks