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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

VESTER L. PATTERSON,
Plaintiff,
v.
JEFFREY BEARD, et al.,
Defendants.

No. 2:15-cv-0290-MCE-EFB P

FINDINGS AND RECOMMENDATIONS

Plaintiff Vester Patterson is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. He seeks leave to proceed in forma pauperis. See 28 U.S.C. § 1915(a). For the reasons explained below, he has not demonstrated that he is eligible to proceed in forma pauperis.

A prisoner may not proceed 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 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). Court records reflect that on at least three prior occasions, plaintiff has brought actions while incarcerated that were dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted. See (1) *Patterson v. Gravlin*, No. 2:98-cv-1590-

1 AAH-RC (C.D. Cal. Apr. 27, 1998) (order dismissing action for failure to state a claim and as
2 frivolous); (2) *Patterson v. Lombatoz*, No. 3:98-cv-1759-AJB (S.D. Cal. Nov. 3, 1998) (order
3 dismissing action for failure to state a claim); (3) *Patterson v. Morris*, No. 2:98-cv-5252-AAH-
4 RC (C.D. Cal. Nov. 9, 1998) (order dismissing action for failure to state a claim); (4) *Patterson v.*
5 *Zuniga*, No. 2:11-cv-9713 (C.D. Cal.) (December 22, 2011 order denying application for leave to
6 proceed in forma pauperis on grounds that complaint fails to state a claim and seeks monetary
7 relief from an immune defendant, and February 22, 2012 order certifying that plaintiff’s appeal
8 therefrom is frivolous); and (5) *Patterson v. Leslie*, No. 2:12-cv-6088-UA-SS (C.D. Cal. Aug. 9,
9 2012) (order dismissing action for failure to state a claim). *See also Patterson v. Lombatoz*, No.
10 3:00-cv-83-W-NLS (S.D. Cal. Feb. 25, 2000) (order designating plaintiff a three strikes litigant
11 for purposes of §1915(g)); *Patterson v. Ratelle*, No. 2:99-cv-369-CM-RC (C.D. Cal. Dec. 26,
12 2003) (order identifying plaintiff as a vexatious litigant).

13 The section 1915(g) exception applies if the complaint makes a plausible allegation that
14 the prisoner faced “imminent danger of serious physical injury” at the time of filing. 28 U.S.C.
15 § 1915(g); *Andrews v. Cervantes*, 493 F.3d 1047, 1055 (9th Cir. 2007). For the exception to
16 apply, the court must look to the conditions the “prisoner faced at the time the complaint was
17 filed, not at some earlier or later time.” *Andrews*, 493 F.3d at 1053, 1056 (requiring that prisoner
18 allege “an ongoing danger” to satisfy the imminency requirement). Courts need “not make an
19 overly detailed inquiry into whether the allegations qualify for the exception.” *Id.* at 1055.

20 In the complaint (ECF No. 1), plaintiff claims that his sentence has been incorrectly
21 calculated and that his related administrative appeals have been denied. He alleges that he should
22 no longer be incarcerated and that because of the miscalculation, he faces the ongoing and
23 imminent danger “that surrounds prison living each day,” including the possibility of being
24 assaulted. ECF No. 1 at 4. Plaintiff’s allegations do not demonstrate that he suffered from an
25 ongoing or imminent danger of serious physical injury at the time he filed his complaint. Thus,
26 the imminent danger exception does not apply. Plaintiff’s application for leave to proceed in
27 forma pauperis must therefore be denied pursuant to § 1915(g).

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Accordingly, it is hereby RECOMMENDED that

1. Plaintiff’s application to proceed in forma pauperis (ECF No. 2) be denied; and
2. This action be dismissed without prejudice to re-filing upon pre-payment of the \$400 filing fee.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections within the specified time may waive the right to appeal the District Court’s order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

Dated: April 23, 2015.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE