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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LANCE WILLIAMS
Plaintiff,
v.
MATILDA PASSINI, et al.,
Defendants.

No. 2:17-cv-01362 MCE CKD P

ORDER

Plaintiff is a state prisoner proceeding pro se in this action pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Along with his complaint, plaintiff filed a motion for leave to proceed in forma pauperis. Title 28 U.S.C. § 1915(g) provides that:

In no event shall a prisoner bring a civil action . . . [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.

A review of court records from the United States District Court for the Central District of California reveals that, before this action was filed, plaintiff had at least three lawsuits dismissed

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1 at the screening stage because they were time barred.¹ In fact, plaintiff conceded as much in his
2 complaint in this civil action. See ECF No. 1 at 3. Each of these dismissals counts as a strike
3 under 28 U.S.C. § 1915(g) because this court is bound by Belanus v. Clark, 796 F.3d 1021 (9th
4 Cir. 2015). See Williams v. Logan, Case No. 2:15-cv-2084 MCE AC P (E.D. Cal.) (ECF No. 18
5 at 2) (recognizing that the majority in Belanus affirmed the decision that a time-barred action
6 counted as a strike under 1915(g)). Moreover, the Ninth Circuit found that the district court in
7 Williams v. Degeorges, 696 Fed. Appx. 238 (9th Cir. 2017) (unpub.), and Williams v. Just, 696
8 Fed. Appx. 261 (9th Cir. 2017) (unpub.), properly denied plaintiff in forma pauperis status
9 because he had sustained three § 1915(g) strikes.² See also Coleman v. Tollefson, 135 S. Ct.
10 1759, 1763 (2015) (holding that a “prior dismissal on a statutorily enumerated ground counts as a
11 strike even if the dismissal is the subject of an appeal.”). Therefore, plaintiff is precluded from
12 proceeding in forma pauperis in this action unless he can demonstrate an “imminent danger of
13 serious physical injury.” 28 U.S.C. § 1915(g).

14 In his complaint, plaintiff alleges that he is in imminent danger based on defendant
15 Passini’s failure to provide him with blood pressure and psychiatric medication on several
16 occasions in 2015 and 2016 while an inmate at California Medical Facility in Vacaville (“CMF”).
17 See ECF No. 1 at 5-6. Plaintiff also alleges that he was the target of “racially motivated
18 harassment from January 12, 2016 thru April 28, 2016 in the M-1 Unit of CMF...” that placed
19 him “under constant threat of injury.” ECF No. 1 at 30. However, plaintiff was transferred to the
20 R.J. Donovan Correctional Center in May 2017 and was housed there at the time of filing his
21 complaint. While plaintiff indicates that he has “enemies” at R.J. Donovan, there are no specific
22 allegations of “a practice that has injured him or others similarly situated in the past or that there
23 is a continuing effect resulting from such a practice.” Williams v. Paramo, 775 F.3d 1182 (9th

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25 ¹ These include: Williams v. Aparicio, No. 2:14-cv-08640 (C.D. Cal. Feb. 5, 2015); aff’d by 669
26 Fed. Appx. 385 (9th Cir. 2016); Williams v. Kerkfoot, No. 2:14-cv-07583 (C.D. Cal. May 15,
2015); ECF No. 15-3 at 35-36; aff’d by 669 Fed. Appx. 380 (9th Cir. 2016); Williams v. Young,
27 No. 2:14-cv-8037 (C.D. Cal. May 19, 2015); ECF No. 15-3 at 46-52 (Memorandum and Order).

28 ² In addition to the three “strikes” identified above, plaintiff has a fourth “strike” arising out of a
Ninth Circuit appeal which was dismissed as frivolous before this action was filed. See Williams
v. Young, No. 15-55967.

1 Cir. 2015) (internal quotations and citation omitted). See ECF No. 1 at 114. Plaintiff does not
2 request any form of injunctive relief in his complaint.

3 In order to meet the imminent danger exception, the court reviews “the conditions a
4 prisoner faced at the time the complaint was filed, not at some earlier or later time.” Andrews v.
5 Cervantes, 493 F.3d 1047, 1053 (9th Cir. 2007). A pro se complaint is also construed liberally to
6 determine whether the § 1915(g) exception applies. See Wolfe v. Strankman, 392 F.3d 358, 362
7 (9th Cir. 2004); Brown v. Johnson, 387 F.3d 1344, 1350 (11th Cir. 2004). As the Ninth Circuit
8 Court of Appeals has explained, this requires “a plausible allegation that the prisoner faced
9 ‘imminent danger of serious physical injury’ at the time of filing” the complaint. Andrews, 493
10 F.3d at 1055.

11 Here, plaintiff has failed to demonstrate an imminent danger at R.J. Donovan Correctional
12 Center. By way of contrast, the Ninth Circuit found an ongoing imminent danger following an
13 inmate’s transfer to a different prison when the complaint was based on allegations that the
14 defendant prison guards spread rumors that plaintiff was a convicted sex offender and child
15 molester and improperly assigned an “R” suffix to her prison file which followed her to
16 subsequent prisons. Williams v. Paramo, 775 F.3d at 1190. In Ashley v. Dilworth, 147 F.3d 715
17 (8th Cir. 1998), the Eighth Circuit concluded that a plaintiff had sufficiently alleged an imminent
18 danger of serious physical injury where he had repeatedly been placed near listed enemies and
19 had been attacked on two separate occasions: first with a nine inch screwdriver and then a year
20 later with a butcher knife. Unlike Williams and Ashley, there is no allegation of conduct by
21 defendants in this action that spread to a different prison or a past harm from prison enemies that
22 has an ongoing effect. Thus, at the time of filing the instant complaint, plaintiff was not under
23 “imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

24 In light of the foregoing, plaintiff’s motion for leave to proceed in forma pauperis will be
25 denied. Plaintiff will be granted fourteen days within which to pay the filing fee for this action.
26 Failure to pay the filing fee in such time period will result in a recommendation that this action be
27 dismissed.

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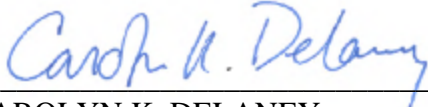
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Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's motion for leave to proceed in forma pauperis (ECF No. 2) is denied.
2. Plaintiff is granted fourteen days within which to pay the \$400 filing fee for this action.

Failure to pay the filing fee within fourteen days will result in a recommendation that this action be dismissed.

Dated: February 1, 2018



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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