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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JAMES CARL KELLY,
Plaintiff,
v.
P. SULLIVAN, et al.,
Defendants.

Case No. [19-cv-03084-SI](#)

ORDER OF DISMISSAL

Re: Dkt. Nos. 7, 9

James Carl Kelly, a California prisoner, filed this action and applied to proceed *in forma pauperis*. On August 9, 2019, the court ordered Kelly to show cause why *in forma pauperis* status should not be denied and the action should not be dismissed under 28 U.S.C. § 1915(g), which provides that a prisoner may not bring a civil action *in forma pauperis* under 28 U.S.C. § 1915 “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 order to show cause identified three prior dismissals that appeared to count under § 1915(g) and noted that Kelly did not appear to be in imminent danger. The order further stated that, in the alternative to showing cause why § 1915(g) should not apply, Kelly could avoid dismissal by paying the full \$400.00 filing fee by the deadline. Docket No. 13.

Kelly’s only response to the order to show cause was a one-page filing in which he stated that he was without funds and therefore should be allowed to proceed *in forma pauperis*. He has not provided any reason not to impose the restrictions of § 1915(g) on him.

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Each of the three earlier dismissals identified in the order to show cause counts as a dismissal for § 1915(g) purposes. Kelly has not paid the filing fee, has not shown that any of the prior dismissals could not be counted under § 1915(g), did not appear to be in imminent danger of serious physical injury at the time he filed his complaint, and does not otherwise show cause why this action could not be dismissed. For the foregoing reasons, Kelly's *in forma pauperis* application is DENIED. Docket No. 9. This action is DISMISSED for failure to pay the filing fee. The dismissal is without prejudice to Kelly asserting his claims in a new complaint for which he pays the full filing fee at the time he files that action.

Kelly's motion for appointment of counsel is DENIED because the court will not appoint counsel in a case that is being dismissed. Docket No. 7.

The clerk shall close the file.

IT IS SO ORDERED.

Dated: October 3, 2019



SUSAN ILLSTON
United States District Judge