

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-02217-BNB

STEVEN MICHAEL TULLER,

Plaintiff,

v.

BILL RITTER JR,
JOHN SUTHERS,
ARISTEDES ZAVARAS,
DR. MILLER,
DR. #1, is Head Psychologist of DOC,
DAVID L. MICHAUD,
#2, is a Member of the Colorad[o] Stat[e] Parole Board,
JOHN DOE #3, is a Member of the Colorado State Parole Board,
JANE DOE #4, is a Member of the Colorado State Parole Board,
JANE DOE #5, is a Member of the Colorado State Parole Board,
MAJOR JOHN DOE #6, is the Programs Man[a]ger at CCF,
CAPT. GALLGOES,
CAPT. PRUIT,
LT. GUNT,
SGT. BROWN,
SGT. TRILLIJO,
MAJOR JOHN DOE, Programs Man[a]ger at SCCF, and
GYM OFFICERS #7,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

NOV 05 2009

GREGORY C. LAMSHAM
CLERK

ORDER OF DISMISSAL

Plaintiff, Steven Michael Tuller, submitted *pro se* a letter to the Court requesting forms, a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915, and a Prisoner Complaint. The Court reviewed the documents pursuant to D.C.COLO.LCivR 8.2, and on September 16, 2009, directed the clerk of the Court to commence a civil action, and directed Mr. Tuller to show cause within thirty days why

he should not be denied leave to proceed pursuant to 28 U.S.C. § 1915(g). On October 13, 2009, Mr. Tuller submitted his response to the order to show cause.

Mr. Tuller seeks leave to proceed without prepayment of fees or security therefor pursuant to 28 U.S.C. § 1915. In relevant part, this statute provides:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding 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). For the purposes of this analysis, the Court may consider actions or appeals dismissed prior to the enactment of 28 U.S.C. § 1915(g). **Green v. Nottingham**, 90 F.3d 415, 420 (10th Cir. 1996).

Mr. Tuller alleges that he is not under imminent danger of serious physical injury. A review of this Court's records reveals that, while he was a prisoner, Mr. Tuller has, on three or more prior occasions, 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. **See Tuller v. Neal**, No. 95-cv-02396-DBS (D. Colo. Jan. 4, 1996) (dismissed as legally frivolous), **aff'd**, No. 96-1049 (10th Cir. Dec. 19, 1996) (appeal dismissed as legally frivolous), **cert. denied**, 520 U.S. 1232 (1997); **see also Tuller v. Neal**, No. 96-cv-00678-DBS (D. Colo. Apr. 5, 1996) (dismissed as legally frivolous), **appeal dismissed**, No. 96-1163 (10th Cir. Jan. 16, 1997); and **Tuller v. Lawrence**, No. 02-cv-02414-ZLW (D. Colo. Feb. 25, 2003)

(dismissed as legally frivolous). Therefore, Mr. Tuller will be denied leave to proceed pursuant to 28 U.S.C. § 1915(g). Accordingly, it is

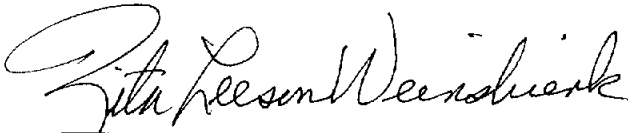
ORDERED that Plaintiff, Steven Michael Tuller, is denied leave to proceed pursuant to 28 U.S.C. § 1915 because: (1) he has, on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted; and (2) he fails to establish that he is under imminent danger of serious physical injury. It is

FURTHER ORDERED that the complaint and the action are dismissed without prejudice. It is

FURTHER ORDERED that the motion titled "Motion in Opposition to Motion for Summary Judgement [sic]" is denied as moot.

DATED at Denver, Colorado, this 5th day of November, 2009.

BY THE COURT:



ZITA L. WEINSHIENK, Senior Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 09-cv-02217-BNB

Steven Michael Tuller
Prisoner No. 76479
San Carlos Corr. Facility
PO Box 3
Pueblo, CO 81003

I hereby certify that I have mailed a copy of the **ORDER AND JUDGMENT** to the above-named individuals on 11/5/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk