

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-01013-BNB

JAMES A. CHILDS,

Plaintiff,

v.

JAMES OLSON, Classification Chairperson,  
O. M. ZUPANY, Associate Warden,  
DANIEL STRAWN, Food Service, Sgt., and  
JEFFREY NESBY, Food Service, Capt.,

Defendants.

FILED  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

JUN 15 2010

GREGORY C. LANGHAM  
CLERK

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ORDER OF DISMISSAL

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Plaintiff, James A. Childs, is a prisoner in the custody of the Colorado Department of Corrections who currently is incarcerated at the Colorado State Penitentiary in Cañon City, Colorado. He submitted to the Court *pro se* a letter to the clerk of the Court, a summons, 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 directed the clerk of the Court to commence a civil action.

Mr. Childs seeks leave to proceed without prepayment of fees or security therefor pursuant to § 1915. In relevant part, § 1915 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).

Mr. Childs, on three or more prior occasions, while he was a prisoner, has brought an action in a federal court that was dismissed on the grounds that it was frivolous or malicious. **See Childs v. Novak**, No. 01-cv-01316-ZLW (D. Colo. Oct. 22, 2001) (dismissed as legally frivolous), **aff'd**, No. 01-1502 (10th Cir. May 20, 2002); **Childs v. Ortiz**, No. 06-cv-00760-ZLW (D. Colo. July 6, 2006) (dismissed as legally frivolous and malicious), **aff'd**, No. 06-1337 (10th Cir. Apr. 30, 2007); and **Childs v. Weinshienk**, No. 08-cv-02180-ZLW (D. Colo. Dec. 3, 2008) (dismissed as legally frivolous), **aff'd**, No. 08-1493 (10th Cir. Apr. 8, 2009).

In response to the question on page two of the instant § 1915 motion and affidavit as to whether he is in imminent danger of serious physical injury, Mr. Childs answered both yes and no, and offered the following explanation: "Defendants disclosing false information to other inmates that Plaintiff is a (sexual predator) (child molester) resulting in threats on life and physical attack when he is moved to general population." The Court found that Mr. Childs' claim of imminent danger of serious physical injury was speculative and in an order filed on May 5, 2010, directed him to show cause within thirty days why he should not be denied leave to proceed pursuant to § 1915(g). On May 14, 2010, Mr. Childs submitted his response to the order to show cause.

Mr. Childs has initiated three or more actions that count as strikes pursuant to § 1915(g). In support of his contention that he is under imminent danger of serious

physical injury, he alleges that by being labeled as a sex offender he is subject to threats on his life and physical attack when he is moved to the general prison population. He also alleges that he has sores on his body from having to eat spoiled foods, such as spoiled cheese, beans, and fruit, on a regular basis. **See** complaint at 36. Mr. Childs has failed to show cause, as directed, by not making sufficient factual allegations that he is under imminent danger of serious physical injury. Pursuant to § 1915(g), he is precluded from bringing the instant action *in forma pauperis*. Mr. Childs will be denied leave to proceed pursuant to 28 U.S.C. § 1915(g).

Accordingly, it is

ORDERED that Plaintiff, James A. Childs, 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 in a court of the United States that was dismissed on the grounds that it is frivolous; 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 instant action are dismissed without prejudice.

DATED at Denver, Colorado, this 14th day of June, 2010.

BY THE COURT:

s/Philip A. Brimmer  
PHILIP A. BRIMMER  
United States District Judge, for  
ZITA LEESON WEINSHIENK, Senior Judge  
United States District Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

**CERTIFICATE OF MAILING**

Civil Action No. 10-cv-01013-BNB

James A. Childs  
Prisoner No. 44876  
Colorado State Penitentiary  
PO Box 777  
Cañon City, CO 81215- 0777

I hereby certify that I have mailed a copy of the **ORDER AND JUDGMENT** to the  
above-named individuals on 6/15/10

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk