

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JASON DAY :
Plaintiff, :
V. : PRISONER
FREDERICK LEVESQUE, ET AL. : CASE NO. 3:09-CV-1117 (RNC)
Defendants. :
:

RULING AND ORDER

On July 30, 2009, plaintiff's application to proceed in forma pauperis ("IFP") was denied by Magistrate Judge Fitzsimmons under the three-strikes provision of the Prison Litigation Reform Act because he had not shown that he was "under imminent danger of serious physical injury." See 28 U.S.C. § 1915(g). On August 31, 2009, the Magistrate Judge denied plaintiff's motion for reconsideration. Plaintiff has filed an objection to the Magistrate Judge's ruling and requested that his motion for reconsideration be decided by a district judge (doc. 9). For the reasons that follow, the Magistrate Judge's ruling is approved and adopted, plaintiff's application to proceed IFP is denied, and the action is conditionally dismissed unless, within 30 days of the entry of this ruling and order, the plaintiff pays the filing fee of \$350.

After de novo review of the plaintiff's submissions, the court concludes that the plaintiff has failed to show that his complaint in this action satisfies the imminent danger exception

to the three-strikes rule. Plaintiff requests access to documents in his central file, which he contends may have been altered to support his transfer out of protective custody. Plaintiff expresses concern that if he is transferred from protective custody, he may be subject to danger from poisoned food or other inmates. Plaintiff's concerns are speculative. Moreover, the relief he seeks in this case - access to documents - would not prevent a transfer. Plaintiff also seeks damages for deliberate indifference relating to an alleged HIV infection. Plaintiff has not shown that he is in imminent danger of contracting a new infection. Nor would the relief sought - an award of damages - remove such a danger.

Accordingly, the Magistrate Judge's ruling is hereby approved and adopted, plaintiff's application for IFP status is denied, and this action is conditionally dismissed unless, within 30 days, plaintiff pays the filing fee of \$350.

So ordered this 30th day of December 2009.

/s/RNC
Robert N. Chatigny
United States District Judge