

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JOHNNY GARRETT,

Plaintiff,

v.

CASE NO. 8:17-cv-1714-T-23TBM

PEOPLE OF THE STATE OF ILLINOIS,

Defendants.

ORDER

Garrett filed a civil rights complaint but neither paid the required filing fee nor moved for leave to proceed *in forma pauperis*. As a consequence, this action is reviewed as if Garrett moves for leave to proceed *in forma pauperis*. The Prison Litigation Reform Act (“PLRA”) amends 28 U.S.C. § 1915 by adding the following subsection:

(g) 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.

“[F]ederal courts in this circuit may properly count as strikes lawsuits or appeals dismissed as frivolous, malicious or failing to state a claim upon which relief

may be granted,” including actions dismissed before the PLRA. *Rivera v. Allin*, 144 F.3d 719, 730 (11th Cir.), *cert. dismissed*, 524 U.S. 978 (1998), *abrogated on other grounds by Jones v. Bock*, 549 U.S. 199 (2007). Garrett’s actions in this district that qualify as a “strike” under Section 1915(g) include *Garrett v. State of Illinois*, 6:17-cv-266-Orl-18DCI and *Garrett v. Diaz*, 5:17-cv-292-Oc-10PRL, which was dismissed based on the “three-strikes” provision in Section 1915(g). Federal courts in other states have applied the “three strikes” provision to Garrett’s actions. *See Garrett v. State of Illinois Attorney General*, Case No. 1:13-CV-02462 (N.D. Ga. 2013) (dismissing Plaintiff’s action without prejudice under 28 U.S.C. § 1915(g)); *Garrett v. Illinois*, Case No. 13-cv-1298-JPG (S.D. Ill. Dec. 30, 2013) (finding that “Plaintiff has filed six meritless civil rights actions . . . in three different courts, within the space of five months” and dismissing his case as frivolous).

Because he has had three or more dismissals that qualify under Section 1915(g) and because he is not under imminent danger of serious physical injury, Garrett is not entitled to proceed *in forma pauperis*. *See Dupree v. Palmer*, 284 F.3d 1234, 1236 (11th Cir. 2002) (“The purpose of the PLRA is to curtail abusive prisoner litigation.”). This preclusion against proceeding *in forma pauperis* is without regard to the merits of the present civil rights complaint. Garrett may initiate a new civil rights action by both filing a civil rights complaint and paying the \$400.00 filing fee.

Accordingly, the complaint (Doc. 1) is **DISMISSED** without prejudice to the filing of a new complaint, in a new action, with a new case number, upon the payment of the \$400.00 filing fee. The clerk must close this case.

ORDERED in Tampa, Florida, on July 25, 2017.



STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE