

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION**

ANTHONY J. FAILS,

Plaintiff,

v.

CASE NO. 4:13cv618-RH/CAS

MICHAEL CREWS, SECRETARY,  
DEPARTMENT OF CORRECTIONS,

Defendant.

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**ORDER DENYING LEAVE TO APPEAL *IN FORMA PAUPERIS***

This case is before the court on the magistrate judge's report and recommendation, ECF No. 28, and the objections, ECF No. 32. I have reviewed *de novo* the issues raised by the objections.

The report and recommendation concludes that the plaintiff's motion for leave to proceed on appeal *in forma pauperis* should be denied. This is correct for three reasons.

First, the plaintiff has at least three "strikes" under 28 U.S.C. § 1915(g) and has not adequately alleged that he is in imminent danger of serious physical injury. The plaintiff therefore cannot proceed *in forma pauperis*.

Second, the plaintiff is attempting to appeal an order refusing to remand the case to state court. The order is not appealable. In due course, the United States Court of Appeals for the Eleventh Circuit will dismiss the appeal for lack of jurisdiction, if the appeal is not first dismissed on other grounds.

Third, the refusal to remand the case was plainly correct. The defendant was entitled to remove this case to this federal court. The plaintiff is not entitled to have the case remanded.

Based on the second and third grounds, I certify under 28 U.S.C. § 1915(a)(3) and Federal Rule of Appellate Procedure 24(a) that the plaintiff's appeal is not taken in good faith and that the plaintiff is not otherwise entitled to proceed on appeal *in forma pauperis*.

For these reasons,

IT IS ORDERED:

The report and recommendation is ACCEPTED and adopted as the court's further opinion. The plaintiff's motion for leave to appeal *in forma pauperis*, ECF No. 26, is DENIED. The case is remanded to the magistrate judge for further proceedings.

SO ORDERED on April 21, 2014.

s/Robert L. Hinkle  
United States District Judge