

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

JORGE NIEBLA,

Plaintiff,

vs.

5:09CV232-RS/AK

T. COPELAND,

Defendant.

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REPORT AND RECOMMENDATION

Plaintiff, an inmate incarcerated within the Florida Department of Corrections, has filed a complaint alleging that Defendant appears to have a “personal thing” against him and is conspiring with others to set him up. (Doc. 1). Plaintiff has not filed the appropriate motions and other papers for leave to proceed in forma pauperis.

The Prison Litigation Reform Act of 1995 (PLRA), provides that a prisoner may not bring a civil action *in forma pauperis* under 28 U.S.C. § 1915:

. . . if the prisoner has, on 3 or more 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).

Plaintiff has had three or more prior prisoner actions dismissed on the grounds that they failed to state a claim: Case nos. 8:01CV914/TBM; 8:01CV143/TGW, and 8:00CV2306/JSM. Case nos. 3:05CV230-RV/MD, 4:05CV235-MP/AK, and 4:05CV275-

MP/AK were dismissed for failure to comply with a court order and failure to prosecute. Plaintiff has also been identified as a "three striker" in the Southern District. See Case Nos. 0:02CV60676; 9:02CV81055; and 1:01CV4326. See also Case No. 4:05cv242 (case dismissed without leave to proceed because Plaintiff failed to allege an imminent danger and he has already been listed as a three striker).

The instant complaint has been reviewed and it has been determined that Plaintiff has not alleged the "imminent danger" exception cited supra. Thus, because Plaintiff has had at least three prior dismissals and does not allege imminent danger of serious physical injury, this case should be summarily dismissed without further order.

In light of the foregoing, it is respectfully **RECOMMENDED** that this case be **DISMISSED with prejudice.**

IN CHAMBERS at Gainesville, Florida, this 15th day of July, 2009.

s/ A. KORNBLUM
ALLAN KORNBLUM
UNITED STATES MAGISTRATE JUDGE

NOTICE TO THE PARTIES

A party may file specific, written objections to the proposed findings and recommendations within 15 days after being served with a copy of this report and recommendation. A party may respond to another party's objections within 10 days after being served with a copy thereof. Failure to file specific objections limits the scope of review of proposed factual findings and recommendations.