

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

HENRY MARVIN MOSS,

Plaintiff

vs.

Officer BOTTOM, *et al.*,

Defendants

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NO. 5:10-cv-304 (CAR)

ORDER

Plaintiff **HENRY MARVIN MOSS**, an inmate at Hancock State Prison in Unadilla, Georgia, has filed a *pro se* civil rights complaint under 42 U.S.C. § 1983. Parties instituting non-habeas civil actions are required to pay a filing fee of \$350.00. 28 U.S.C. § 1914(a). Because plaintiff has failed to pay the required filing fee, the Court assumes that he wishes to proceed *in forma pauperis* in this action.

Under the “three strikes” provision of the Prison Litigation Reform Act (“PLRA”), a prisoner is generally precluded from proceeding *in forma pauperis* if at least three prior lawsuits or appeals by the prisoner were dismissed as frivolous, malicious or failing to state a claim upon which relief may be granted. 28 U.S.C. §1915(g). Dismissal without prejudice for failure to exhaust administrative remedies and dismissal for abuse of judicial process are also properly counted as strikes. *See Rivera v. Allin*, 144 F.3d 719 (11th Cir. 1998). Section 1915(g) provides an exception to the three strikes rule, under which an inmate may proceed *in forma pauperis* if he alleges he is in “imminent danger of serious physical injury.” The prisoner must allege a present imminent danger, as opposed to a past danger, to proceed under section 1915(g)’s imminent danger exception. *Medberry v. Butler*, 185 F.3d 1189, 1193 (11th Cir. 1999).

The Eleventh Circuit has upheld the constitutionality of section 1915(g) in concluding that section 1915(g) does not violate an inmate’s right of access to the courts, the doctrine of separation

of powers, an inmate's right to due process of law, or an inmate's right to equal protection. *Rivera*, 144 F.3d at 721-27.

A review of court records reveals that plaintiff has a prolific filing history.¹ As plaintiff has more than three strikes, he cannot proceed *in forma pauperis* in the instant case unless he can show that he qualifies for the "imminent danger of serious physical injury" exception of section 1915(g).

Plaintiff's claims arise out of his prior confinement at Augusta State Medical Prison ("ASMP"). Specifically, plaintiff states that on June 2, 2010, defendant Officer Bottom handcuffed plaintiff, pushed him to the ground, "snatched" plaintiff up by the handcuffs, and "rammed" plaintiff into an exercise rack. Plaintiff further states that defendant Officer Bussey put her forearm against plaintiff's neck.

Even if plaintiff were still confined at ASMP, the above claims, standing alone, would not constitute "imminent danger of serious physical injury." Moreover, situations that plaintiff may have faced at a prison where he was previously confined do not support imminent danger with respect to his current confinement. *See e.g., Medberry*, 185 F.3d at 1993.

Because plaintiff has more than three prior strikes and is not under imminent danger of serious injury, his request to proceed *in forma pauperis* is **DENIED** and the instant action is **DISMISSED** without prejudice.

If plaintiff wishes to bring a new civil rights action, he may do so by submitting new complaint forms and the entire \$350.00 filing fee at the time of filing the complaint. As the Eleventh Circuit stated in *Dupree v. Palmer*, 284 F.3d 1234, 1236 (11th Cir. 2002), a prisoner cannot simply pay the filing fee after being denied *in forma pauperis* status; he must pay the filing fee at

¹ At present, at least six of plaintiff's complaints or appeals have been dismissed as frivolous pursuant to 28 U.S.C. § 1915: *Moss v. Miller*, 1:98-cv-66 (WLS) (M.D. Ga.) (appeal); *Moss v. Superior Ct. of Dougherty Co.*, 1:95-cv-222 (WLS) (M.D. Ga. Dec. 8, 1995) (complaint); *Moss v. Kelley*, 1:95-cv-197 (WLS) (M.D. Ga. Oct 31, 1995) (complaint); *Moss v. State of Georgia*, 1:94-cv-3360-FMH (N.D. Ga. Feb. 16, 1995) (complaint); *Moss v. Priddy*, 1:94-cv-9 (WLS) (M.D. Ga. Jan. 28, 1994) (complaint); and *Moss v. Williams*, 1:94-cv-8 (WLS) (M.D. Ga. Jan. 31, 1994) (complaint).

the time he initiates the suit. Moreover, as this Court has previously instructed plaintiff, if he wishes to bring a section 1983 arising out of events occurring at ASMP, he must file his complaint with the District Court in Southern District of Georgia, not this Court.

SO ORDERED, this 26th day of August, 2010.

S/ C. Ashley Royal
C. ASHLEY ROYAL, JUDGE
UNITED STATES DISTRICT COURT

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