

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

PETER R. TIA, #A1013142,)	CIV. NO. 17-00102 LEK-KSC
)	
Plaintiff,)	ORDER VACATING DEFICIENCY
)	ORDER AND DISMISSING
vs.)	ACTION PURSUANT TO 28
)	U.S.C. § 1915(g)
HAWAII PAROLING AUTHORITY,)	
et al.,)	
)	
Defendants.)	
_____)	

**ORDER VACATING DEFICIENCY ORDER AND DISMISSING ACTION
PURSUANT TO 28 U.S.C. § 1915(g)**

Before the court is pro se Plaintiff Peter R. Tia's prisoner civil rights complaint. ECF No. 1. Because Tia did not submit the \$400.00 filing fee or an Application to Proceed In Forma Pauperis ("IFP"), the court issued an automatic Deficiency Order directing him to do so. ECF No. 2. For the following reasons, the court VACATES the Deficiency Order and DISMISSES this action pursuant to 28 U.S.C. § 1915(g).

I. TIA'S CLAIMS

Tia alleges that Hawaii Paroling Authority ("HPA") former and current board members Bert Y. Matsuoka and Fituina F. Tua conspired with Hawaii Ombudsman

Alfred Itumura, Department of Public Safety officials, and others to impose improper conditions of parole when they granted him tentative approval of parole on December 13, 2016. Tia says this tentative approval is conditioned on his showing he has been accepted in appropriate housing and agreeing to comply with all medical orders by his treating physicians. Tia alleges the latter condition violates a state court order that released him from being involuntarily medicated between 2013 and 2015. *See generally*, Compl., ECF No. 1. Tia refers to Exhibits A and B as proof of these allegedly improper parole conditions, but fails to attach such exhibits to the Complaint.

II. 28 U.S.C. § 1915(g)

A prisoner may not bring a civil action or appeal a civil judgment if he has:

on 3 or more prior occasions, while incarcerated . . . 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 [he] is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g).

Section 1915(g) "should be used to deny a prisoner's IFP status only when . . . the district court determines that the [earlier] action was dismissed because it was frivolous, malicious or failed to state a claim." *Andrews v. King*, 398 F.3d 1113, 1121 (9th Cir. 2005). "[D]ocket records may be sufficient to show that a prior dismissal satisfies at least one of the criteria under § 1915(g)." *Id.* at 1120.

Tia has accrued three "strikes" under § 1915(g), and has been notified of these strikes.¹ Tia may not proceed in a civil action without concurrent payment of the civil filing fee unless he plausibly alleges that he was in imminent danger of serious physical injury based on Defendants' actions when he filed suit.

III. NO IMMINENT DANGER

The imminent danger "exception applies if the

¹See *Tia v. Criminal Investigation*, 1:10-cv-00441 DAE (D. Haw. 2010) (dismissed as frivolous and ftsc); *Tia v. Criminal Investigation*, 1:10-cv-00383 SOM (D. Haw. 2010); and (same); *Tia v. Fujita*, 1:08-cv-00575 HG (D. Haw. 2009) (dismissed for failure to state claim). See PACER Case Locator <http://pacer.psc.uscourts.gov>.

complaint makes a plausible allegation that the prisoner faced 'imminent danger of serious physical injury' at the time of filing." *Andrews v. Cervantes*, 493 F.3d 1047, 1055 (9th Cir. 2007). This "exception turns on the conditions a prisoner faced at the time the complaint was filed, not some earlier or later time." *Id.* at 1053. Claims of "imminent danger of serious physical injury" cannot be triggered solely by complaints of past abuse. *See Ashley v. Dilworth*, 147 F.3d 715, 717 (8th Cir. 1998); *Luedtke v. Bertrand*, 32 F. Supp. 2d 1074, 1077 (E.D. Wis. 1999).

Tia's allegations that Matsuoka and Tua tentatively approved his release on parole subject to his compliance with physicians' medical orders does not show that Tia was in imminent danger of serious physical injury when he commenced this action. Tia has not been granted parole, thus, he is not subject to any allegedly improper conditions of parole. Even accepting that Tia's future release on parole may be conditioned upon his compliance with physicians' orders to take prescribed medication does not show that Tia is

or will be placed in imminent danger of serious physical injury without more concrete allegations.

IV. CONCLUSION

Tia is not in imminent danger of serious physical injury based on any alleged tentative decisions of the HPA and he may not proceed IFP in this action. Accordingly, the Deficiency Order, ECF No. 2, is VACATED and this action is DISMISSED without prejudice to Tia's refiling these claims in a new action with concurrent payment of the civil filing fee. Any pending motions are terminated. The Clerk of Court is DIRECTED to close the case and note this dismissal is pursuant to 28 U.S.C. § 1915(g).

IT IS SO ORDERED.

DATED: HONOLULU, HAWAII, March 8, 2017.



/s/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States District Judge