

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

ANTONIO JOSEPH MCKENDALL

CIVIL ACTION

VERSUS

NO. 17-9299

WARDEN GREGORY LAGINO, ET AL.

SECTION "J" (2)

**ORDER AND REASONS**

Plaintiff, Antonio Joseph McKendall, an inmate currently incarcerated in the Riverbend Detention Center, has submitted an application to proceed in forma pauperis in connection with the above-captioned 42 U.S.C. § 1983 complaint. Plaintiff seeks monetary and injunctive relief against defendants for injuries he received in a fight with another inmate and defendants' failure to protect him afterwards, while he was still in the St. Tammany Parish Jail. Record Doc. No. 1, Complaint. His pauper application is a non-dispositive pretrial matter which was referred to a United States Magistrate Judge pursuant to Local Rule 72.1(B)(1) and 28 U.S.C. § 636(b).

The Prison Litigation Reform Act ("PLRA"), Pub. L. No. 104-134, 110 Stat. 1321, signed into law on April 26, 1996, now codified at 28 U.S.C. § 1915(g), provides that a prisoner shall not be allowed to bring a civil action pursuant to 28 U.S.C. § 1915 if he has, on three 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 grounds that it was frivolous, malicious, or failed to state a claim

for which relief can be granted, unless the prisoner is under imminent danger of serious physical injury.

McKendall has been a frequent filer of civil actions while incarcerated. At least three (3) of his prior civil actions were dismissed as frivolous and/or for failure to state a claim: Joseph McKendall v. C.M. Lensing, Civ. Action 01-0539 (M.D. La. 2001) (dismissed with prejudice as frivolous and for failure to state a claim); Joseph McKendall v. Richard L. Stalder et al., Civ. Action No. 04-0371 (M.D. La. 2004) (dismissed with prejudice for failure to state a claim and appeal dismissed as frivolous); Joseph McKendall v. Ms. Blakley et al., Civil Action No. 08-4722“D”(1) (E.D. La.) (dismissed with prejudice as frivolous and for failure to state a claim). He has therefore accumulated three “strikes” under the PLRA.

Under these circumstances, plaintiff may not proceed as a pauper in this action unless he fits within the “imminent danger” exception of Section 1915(g). Plaintiff has not alleged, nor does his complaint demonstrate, anything establishing that he is in imminent danger of serious physical injury. He is no longer in the St. Tammany Parish Jail, where any presumed danger may have existed at some past time. Consequently, he is not entitled to proceed in forma pauperis pursuant to the provisions of the PLRA. For the foregoing reasons,

**IT IS ORDERED** that plaintiff's motion to proceed in forma pauperis (Record Doc. No. 2) is **DENIED** pursuant to 28 U.S.C. § 1915(g).

New Orleans, Louisiana, this 21<sup>st</sup> day of September, 2017.

A handwritten signature in black ink, reading "Joseph C. Wilkinson, Jr.", written in a cursive style. The signature is positioned above a horizontal line.

JOSEPH C. WILKINSON, JR.  
UNITED STATES MAGISTRATE JUDGE