

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

FILED  
U.S. DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA  
2009 SEP 18 P 2:21

BY \_\_\_\_\_  
CLERK

FELIX A. PRICE (#91688)

VERSUS

CIVIL ACTION

N. BURL CAIN, ET AL

NUMBER 09-635-RET-DLD

RULING

This matter is before the court on the plaintiff's Motion for Relief From Judgment/Order; In the Alternative Motion to Alter or Amend Judgment of the Magistrate. Record document number 6.

Plaintiff's motion to proceed in forma pauperis pursuant to 28 U.S.C. § 1915 was denied because on three prior occasions during detention, the plaintiff brought an action that was dismissed as frivolous or for failure to state a claim upon which relief can be granted. Section 1915(g) contains an exception that allows prisoners whose privileges have been revoked to proceed in forma pauperis in cases involving imminent danger of serious physical injury.

Plaintiff argued that suits which were dismissed as frivolous or for failure to state a claim prior to the enactment of the PLRA should not be counted as a "strike" for purposes of Section 1915. Plaintiff further argued that his allegations fall within the imminent danger exception to the statute. Plaintiff's arguments are not persuasive.

In *Adepegba v. Hammons*, 103 F.3d 383 (5th Cir. 1996), the Fifth Circuit Court of Appeals held that suits dismissed prior to the effective date of the statute on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted are considered within the ambit of the "three strikes" provision of section 1915(g).

A review of the complaint showed that the plaintiff's claims do not fall under the exception.

Accordingly, the plaintiff's Motion for Relief From Judgment/Order; In the Alternative Motion to Alter or Amend Judgment of the Magistrate is denied.

Baton Rouge, Louisiana, September 18, 2009.



\_\_\_\_\_  
RALPH E. TYSON, CHIEF JUDGE  
MIDDLE DISTRICT OF LOUISIANA