

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

ROBERT POOLER (#234804)

VERSUS

CIVIL ACTION

N. BURL CAIN, ET AL

NUMBER 12-758-JJB-SCR

RULING ON APPEAL OF ORDER DENYING IFP STATUS

Before the court is the plaintiff's Rule 60 Motion for Relief From Judgment or Order which shall be treated as an appeal of the of the order denying the plaintiff's Motion to Proceed In Forma Pauperis. Record document number 6.

On December 3, 2012, the plaintiff's motion to proceed in forma pauperis was denied pursuant to 28 U.S.C. § 1915(g) because the plaintiff has, on three prior occasions, while incarcerated, brought an action in federal court that was dismissed as frivolous or for failure to state a claim upon which relief can be granted.

In his appeal, the plaintiff does not dispute that he has accumulated three strikes under § 1915(g) but contends that he meets the exception under § 1915(g) because he is in imminent danger of serious physical injury. The gist of the plaintiff's argument is that he has not received adequate medical testing for his exposure to human waste on February 25, 2012. However, the plaintiff does not dispute that his medical concerns have been addressed, he is simply dissatisfied with the actions taken by medical personnel and wants to be evaluated by a doctor at a

facility outside the prison.

Plaintiff has not shown that he was under imminent danger of serious physical injury at the time he filed his motion to proceed in forma pauperis. See *Banos v. O'Guin*, 144 F.3d 883, 884 (5th Cir. 1998).

Accordingly, the order of the magistrate judge denying the plaintiff's motion to proceed in forma pauperis and ordering him to pay the full filing fee within 21 days from the date of the December 3, 2012 order is affirmed.

Baton Rouge, Louisiana, December 17th, 2012.

JAMES J. BRADY
UNITED STATES DISTRICT JUDGE