

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

PRESTON G. DEMOUCHETTE, JR. (#90331)

CIVIL ACTION

VERSUS

JAMES M. LeBLANC, ET AL.

NO. 17-00164-JJB-EWD

ORDER

Before the Court are Plaintiff's *Motion for a Writ of Mandamus* pursuant to 28 U.S.C. § 1361 (R. Doc. 4) and *Motion for Relief from a Judgment or Order pursuant to Fed. R. Civ. P. 60* (R. Doc. 8). In both of these *Motions*, Plaintiff challenges the Court's *Order* of April 11, 2017 (R. Doc. 3), which denied his *Motion to Proceed In Forma Pauperis* herein and directed him to pay the full amount of the Court's filing fee.

Plaintiff is not entitled to the relief requested. In accordance with 28 U.S.C. § 1915(g), this Court has properly concluded that Plaintiff is not entitled to proceed as a pauper in this case. This statute provides, in pertinent part:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 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 the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

See also *Adepegba v. Hammons*, 103 F.3d 383 (5th Cir. 1996).

Inasmuch as Plaintiff has, while incarcerated, brought three or more prior actions that have been dismissed as frivolous, malicious or for failure to state a claim upon which

relief may be granted,¹ he is not entitled to proceed as a pauper herein.² Accordingly,

IT IS ORDERED that Plaintiff's for a *Writ of Mandamus* pursuant to 28 U.S.C. § 1361 (R. Doc. 4) and *Motion for Relief from a Judgment or Order pursuant to Fed. R. Civ. P. 60* (R. Doc. 8) are hereby **DENIED**.

Considering that the Court is denying Plaintiff's Motion for Relief from Judgment or Order, **IT IS FURTHER ORDERED** that Plaintiff's second *Motion to Proceed In Forma Pauperis* (R. Doc. 5) is **DENIED AS MOOT**.

IT IS FURTHER ORDERED that Plaintiff is granted fourteen (14) days from the date of this *Order* within which to pay \$400.00, the full amount of the Court's filing fee. The filing fee must be paid in full in a single payment. No partial payments will be accepted. **Failure to pay the filing fee within 14 days shall result in the dismissal of Plaintiff's action without further notice from the Court.**

Signed in Baton Rouge, Louisiana, on June 21, 2017.



JUDGE JAMES J. BRADY
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

1 Cases filed by Plaintiff, while incarcerated, that have been dismissed by the federal courts as frivolous or for failure to state a claim include, but are not limited to, *Preston George_Demouchet, Jr. v. Ronald Bonvillian, et al.*, Civil Action No. 96-7332-FJP-SCR (M.D., La.), *Preston George Demouchet, Jr. v. Bernard E. Boudreaux, et al.*, Civil Action No. 98-1063-RFD-MEM (W.D. La.), and *Preston George Demouchette, Jr. v. Richard L. Stalder, et al.*, Civil Action No. 99-0419-TLM-PAT (W.D. La.). The United States Court of Appeals for the Fifth Circuit has concurred with this Court's determination that Plaintiff has amassed three "strikes" under 28 U.S.C. 1915(g). See *Preston Demouchette v. James LeBlanc*, No. 12-30947, and *Preston Demouchetted, Jr. v. James LeBlanc, et al.*, No. 14-31254.

2 The Court finds that the allegations of the *Complaint* do not fall within the "imminent danger" exception to the statute.