

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION**

**JOHN GENE SIMON, SR.
LA. DOC #246547**

CIVIL ACTION NO. 3:11-cv-0944

VERSUS

SECTION P

JUDGE ROBERT G. JAMES

STATE OF LOUISIANA, ET AL.

MAGISTRATE JUDGE KAREN L. HAYES

ORDER

Pro se plaintiff John Gene Simon, Sr., (“Simon”) was one of a number of plaintiffs who filed a “Mass Tort Civil Claim” pursuant to 42 U.S.C. §1983 and *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971)(authorizing civil rights suits against federal employees or agents) on June 9, 2011. When this Complaint was filed, Simon was an inmate in the custody of Louisiana’s Department of Public Safety and Corrections. His current whereabouts and status are unknown. The handwritten pleading submitted by Simon and others complains of “price gouging” and “price fixing” with regard to the collection of sales taxes for items, including postage stamps, purchased at various prison commissaries in the State of Louisiana. Simon (and others) sued the State of Louisiana, the Calcasieu Parish Sheriff’s Department, the United States Department of Justice, the Louisiana Department of Corrections and the Keefe Commissary Network Sales Co. seeking unspecified relief.

Title 28 U.S.C. §1915(g) provides:

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.

Simon has had more than 3 prisoner civil rights complaint dismissed as frivolous or for failing to state a claim for which relief may be granted and the United States Fifth Circuit Court of Appeals has confirmed that “... he may not proceed *in forma pauperis* in any civil action or appeal **filed while he is incarcerated or detained in any facility** unless he is under imminent danger of serious physical injury.” *John Gene Simon, Sr. vs. Beth Lundy, et al.*, No 04-31079 (5th Cir. August 16, 2005) (The Fifth Circuit’s Mandate may be also be found in this Court’s records in Civil Action No. 2:04-cv-1094 at Doc. 19) (emphasis added). Further, Simon’s pleadings do not establish the exception to the statute since it is clear that he is not in imminent danger of serious physical injury as a result of the prison commissaries’ collection of sales taxes.

Therefore, since Simon is ineligible to proceed *in forma pauperis*, and, since he has not paid the full filing fee,

IT IS ORDERED that Simon’s Complaint is hereby **DISMISSED** and **STRICKEN**.

MONROE, LOUISIANA, this 19th day of August, 2011.


ROBERT G. JAMES
UNITED STATES DISTRICT JUDGE