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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

Simon v. Louisiana et al

JUDGE ROBERT G. JAMES

Doc. 6

STATE OF LOUISIANA, ET AL.

MAGISTRATE JUDGE KAREN L. HAYES

ORDER

Pending before the Court is a “Motion in Opposition, to ‘Order’ to Dismiss” (hereinafter “motion for reconsideration”) [Doc. No. 5] filed by *pro se* Plaintiff John Gene Simon, Sr., (“Simon”).

On August 15, 2011, the Court issued a memorandum order [Doc. No. 3] striking Simon’s Complaint for failure to pay the filing fee. Pursuant to 28 U.S.C. §1915(g), Simon is not permitted to proceed *in forma pauperis* because he has had three (or more) 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.’” [Doc. No. 3 (quoting *Simon v. Lundy*, No 04-31079 (5th Cir. August 16, 2005)]. Since Simon’s allegations in his Complaint clearly indicated that he was not in imminent danger of serious physical injury, he could not establish that he was entitled to proceed *in forma pauperis* under the exception to § 1915(g).

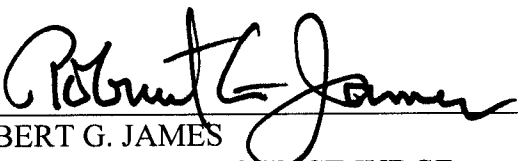
In his motion for reconsideration, Simon argues that the Court is incorrect and that he has

not accumulated three strikes because he actually settled two lawsuits. He cites to a 1998 case in the Western District of Louisiana and a 1994 case in the Central District of California.

However, the Court did not rely on either of these cases to reach its determination that Simon has had three previous lawsuits dismissed as frivolous or for failure to state a claim. The Court relied on the opinion of the United States Court of Appeals for the Fifth Circuit in *Simon v. Lundy*. In that opinion, the Fifth Circuit dismissed Simon's appeal and specifically noted that he would not be permitted to file any future cases as a prisoner *in forma pauperis* because he had accumulated three strikes: (1) the dismissal of *Simon v. Lundy* by the district court; (2) the dismissal of *Simon v. Lundy* by the Fifth Circuit; and (3) the dismissal of the companion case of *Simon v. Dixon*, No.2:04-cv-782 (W.D. Tex. Aug. 30, 2004). Accordingly,

IT IS ORDERED that Simon's motion for reconsideration [Doc. No. 5] is DENIED.

MONROE, LOUISIANA, this 20<sup>th</sup> day of September, 2011.

  
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ROBERT G. JAMES  
UNITED STATES DISTRICT JUDGE