

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

DALE MILLER
LA. DOC #479248
VS.

CIVIL ACTION NO. 6:14-cv-2410

SECTION P

JUDGE DOHERTY

MICHAEL HARSON, ET AL.

MAGISTRATE JUDGE HILL

ORDER

Before the court the "Formal Complaint to Chief Justice" filed by *pro se* plaintiff Dale Miller, which the Court has construed as a Motion to Reconsider. [rec. doc. 10]. By this Motion, plaintiff complains that by denying plaintiff permission to proceed in *forma pauperis* in this Court and on appeal and dismissing his Complaint for failing to pay the Court's filing fee pursuant to the Three Strikes provision set forth in 28 U.S.C. § 1915(g)¹, which prohibits a prisoner from proceeding in *forma pauperis* in a civil action if he has had three actions or appeals dismissed for frivolousness, maliciousness, or failure to state claim, the Court has violated plaintiff's Constitutional right to access the courts. The

¹ Section 1915(g) provides as follows:

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.

Miller does not allege (nor do his pleadings remotely suggest) that he is under imminent danger of serious physical harm.

Fifth Circuit, however, has held that the Three Strikes provision governing in *forma pauperis* actions by prisoners does not violate the Constitutional right of access to the courts because the provision "does not prevent a prisoner with three strikes from filing civil actions; it merely prohibits him from enjoying IFP status." *Carson v. Johnson*, 112 F.3d 818, 821 (5th Cir. 1007). Accordingly, a prisoner with three strikes "still has right to file suits if he pays the full filing fees in advance, just like everyone else." *Id.* Therefore;

Plaintiff's Motion to Reconsider [rec. doc. 10] is **denied**.

Signed at Lafayette, Louisiana on December 31, 2014.


C. MICHAEL HILL
UNITED STATES MAGISTRATE JUDGE