

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

COREY A. ASKEW,

Plaintiff,

v.

CASE NO. 08-13567
HONORABLE DENISE PAGE HOOD
MAGISTRATE JUDGE

HLUCHANIUK
VICKI McCABE, GRETCHEN WALTERS,
LARRY McMILLAN, PEGGY CARBERRY,
DENVER McBURNEY, CHRISTOPHER CRYSLER,
and JOHN DOE(S),

Defendants.

ORDER DIRECTING PLAINTIFF TO
(1) SUBMIT A SIGNED COPY OF HIS COMPLAINT AND TO
(2) SHOW CAUSE WHY HIS COMPLAINT SHOULD NOT
BE DISMISSED FOR FAILURE TO PREPAY THE FILING FEE

Plaintiff Corey A. Askew is a state prisoner at Alger Maximum Correctional Facility in Munising, Michigan. He has filed a *pro se* civil rights complaint under 42 U.S.C. § 1983. The complaint alleges that, on November 23, 2006, correctional officers dispensed a chemical gas into a cell at Southern Michigan Correctional Facility. The gas spread throughout the cell block, including the cell where Plaintiff was confined at the time. Plaintiff filed a grievance about the incident, but staff at the prison determined that they were not required to move Plaintiff when administering gas. Plaintiff's security classification subsequently was increased, and he was transferred from the Southern Michigan Correctional Facility in Jackson, Michigan to his present location in Munising, Michigan.

Plaintiff claims that the defendants' refusal to move him to another cell after dispensing a

chemical agent in his cell block amounted to cruel and unusual punishment. He claims that transferring him to another prison was retaliatory conduct based on his exercise of the right to file grievances. He sues the defendants in their personal and official capacities for declaratory, injunctive, and monetary relief.

A preliminary question is the matter of the filing fee for this action. Although Plaintiff has applied for leave to proceed without prepayment of the filing fee, three of his prior complaints have been dismissed as frivolous or for failure to state a claim. *See Askew v. Blair, et al.*, No. 1:07-cv-00636 (W.D. Mich. Apr. 4, 2008); *Askew v. Bergh, et al.*, No. 2:07-cv-00127 (W.D. Mich. Oct. 4, 2007); *Askew v. Berrien County Jail, et al.*, No. 1:94-cv-00663 (W.D. Mich. Nov. 8, 1994).¹

Federal courts may dismiss an indigent prisoner's civil rights case if, on three or more previous occasions, any federal court dismissed the prisoner's complaint as frivolous or malicious or for failure to state a claim for which relief may be granted. 28 U.S.C. § 1915(g). An exception exists only for prisoners who are "under imminent danger of serious physical injury." *Id.*

Because Plaintiff has "three strikes," he is **ORDERED** to prepay the filing fee of \$350.00 or to show cause why his complaint should not be dismissed. Plaintiff is further **ORDERED** to submit a signed copy of his complaint to the Clerk of Court, as required by Federal Rule of Civil Procedure 11(a).

Dated: October 6, 2008

_____s/R. STEVEN WHALEN
R. STEVEN WHALEN
UNITED STATES MAGISTRATE JUDGE

¹ A copy of the docket sheets for these cases is attached to this order.