

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CORIELLE JOHNSON,

Plaintiff,

Case Number: 2:16-cv-10973
HON. NANCY G. EDMUNDS

v.

MICHIGAN DEPARTMENT OF
CORRECTIONS,

Defendant.

**ORDER DENYING PLAINTIFF'S APPLICATION FOR LEAVE
TO PROCEED WITHOUT PREPAYMENT OF THE FILING FEE
AND DISMISSING COMPLAINT**

Michigan state prisoner Corielle Johnson has filed a *pro se* civil rights complaint under 42 U.S.C. § 1983 and an application to proceed without prepayment of the filing fee for this action. *See* 28 U.S.C. § 1915(a)(1). Plaintiff alleges that he has been denied access to the courts and that prison officials have retaliated against him for filing lawsuits and grievances. Plaintiff seeks monetary damages and injunctive relief. Plaintiff has requested that he be permitted to proceed *in forma pauperis* in this case. *See* 28 U.S.C. § 1915(a)(1) (1996). For the reasons stated below, the Court will deny Plaintiff leave to proceed *in forma pauperis* and will dismiss the complaint pursuant to 28 U.S.C. § 1915(g).

Under the Prison Litigation Reform Act ("PLRA"), Pub. L. No. 104-134, 110 Stat. 1321 (1996), a prisoner is prevented from proceeding *in forma pauperis* in a civil action

under certain circumstances. The statute states, in relevant 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.

42 U.S.C. § 1915(g).

In short, this “three strikes” provision allows the court to dismiss a case where the prisoner seeks to proceed *in forma pauperis*, if, on three or more previous occasions, a federal court has dismissed the prisoner’s action because it was frivolous or malicious or failed to state a claim for which relief may be granted. 28 U.S.C. § 1915(g) (1996); *Edwards v. Gaul*, 40 F. App’x 970, 971 (6th Cir. 2002) (holding that district court properly dismissed without prejudice a prisoner’s civil rights complaint barred by the “three strikes” provision).

Plaintiff has filed three prior civil rights complaints that have been dismissed by federal courts for being frivolous, malicious, or for failing to state a claim upon which relief could be granted. *See Johnson v. Tollefson, et al.*, Case No. 2:14-cv-86 (W.D. Mich. Jan. 25, 2016); *Johnson v. Niemi, et al.*, Case No. 2:15-cv-91 (W.D. Mich. Sept. 3, 2015); *Johnson v. Lanala, et al.*, Case No. 2:15-cv-92 (W.D. Mich. Aug. 26, 2015). Plaintiff also has received notice that he is a three-striker, having had a case dismissed under 28 U.S.C. § 1915(g). *See Johnson v. Jondreau, et al.*, Case No. 2:16-cv-20 (W.D. Mich. March 4, 2016).

A plaintiff may maintain a civil action despite having had three or more civil actions dismissed as frivolous if the prisoner is “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). To establish that his complaint falls within the statutory exception to the three strikes rule, a prisoner must allege that he is under imminent danger at the time that he seeks to file his complaint and proceed *in forma pauperis*. *Vandiver v. Vasbinder*, 416 F. App’x 561 (6th Cir. Mar. 28, 2011).

Plaintiff’s complaint includes alleges the denial of access to the courts and retaliation. The complaint is handwritten and difficult to read, but the Court finds no claims indicating that Plaintiff is in imminent danger of serious physical injury.

Accordingly, the court **DENIES** Plaintiff’s application for leave to proceed without prepayment of the filing fee. Additionally, the court **DISMISSES** the complaint pursuant to 28 U.S.C. § 1915(g). This dismissal is without prejudice to Plaintiff filing a new complaint with payment of the filing fee.

SO ORDERED.

S/ Nancy G. Edmunds
NANCY G. EDMUNDS
UNITED STATES DISTRICT JUDGE

Dated: April 4, 2016