

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FREDERICK BANKS,

Plaintiff,

Civil Number: 2:17-cv-12273
HONORABLE SEAN F. COX

v.

ADRIAN ROE, ET AL.,

Defendants.

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

Frederick Banks, an inmate in the Northeast Ohio Correctional Center, has filed a petition for a writ of mandamus, arguing that defendants have conspired to delay proceedings in his criminal case. 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 at least 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 Banks v. Renewal, Inc.*, No. 13-129, 2013 WL 967959 (W.D. Pa. Mar.11, 2013); *Banks v. Outlaw*, No. 2:12CV00094, 2012 WL 2183038, at *1 (E.D. Ark. June 14, 2012) (citing *Banks v. U.S. Marshal*, 274 F. App’x 631 (10th Cir. 2008)); *Banks v. Pennsylvania*, No. 09-1437, 2010 WL 569545 (W.D. Pa. Jan.4, 2010) (denying plaintiff’s application to proceed in forma pauperis and dismissing action pursuant to three strikes rule set forth in 28 U.S.C. § 1915(g)).

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 fails to allege any facts to establish that the claimed violations place him in imminent danger of physical injury. *Mulazim v. Michigan Department of Corrections*, 28 F. App’x 470, 472 (6th Cir. 2002).

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).

SO ORDERED.

Dated: September 1, 2017

s/Sean F. Cox

Sean F. Cox

U. S. District Judge

I hereby certify that on September 1, 2017, the foregoing document was served on counsel of record via electronic means and upon Frederick Banks via First Class mail at the address below:

Frederick Banks
05711-068
NEOCC
2240 Hubbard Road
Youngstown, OH 44505

s/J. McCoy

Case Manager