

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DARRYL MCGORE,

Plaintiff,

Case No. 1:10-cv-115

v

HON. JANET T. NEFF

UNKNOWN JOHNSON and
UNKNOWN SCHIEBNER,

Defendants.

OPINION AND ORDER

Plaintiff has “three strikes” within the meaning of 28 U.S.C. § 1915(g) but was nonetheless granted *in forma pauperis* (IFP) status in this case because the Magistrate Judge determined that the allegations of “imminent danger” set forth in his complaint satisfied this statutory exception to the three-strikes rule. Specifically, plaintiff alleged he was being threatened by his cellmate. Defendant Schiebner subsequently filed a Motion to Vacate *In Forma Pauperis* Status (Dkt 13), contending that plaintiff was moved to another cell more than two months before he initiated the present action. The Magistrate Judge issued a Report and Recommendation, recommending that this Court grant defendant’s motion (Dkt 50). The matter is presently before the Court on Plaintiff’s objections to the Report and Recommendation (Dkts 52-53). In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

Plaintiff's objections consist of his disagreement with defendant's affiants over the dates on which he was transferred to a single person cell (Dkt 52 at 2), his disagreement with the purported reason for his transfer (*id.* at 3), and his explanation for why he waited to file his complaint (*id.* at 4). None of these objections, even if based on factually true assertions, demonstrate any error in the Magistrate Judge's determination that the imminent danger exception does not apply in this case. Rather, the Court agrees that the Magistrate Judge properly concluded that plaintiff's action does not fall under the exception for an inmate subjected to "imminent danger of serious physical injury," 28 U.S.C. § 1915(g), and that his IFP status is therefore properly revoked. Accordingly:

IT IS HEREBY ORDERED that the Objections (Dkts 52-53) are DENIED and the Report and Recommendation (Dkt 50) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that the Motion to Vacate *In Forma Pauperis* Status (Dkt 13) is GRANTED.

IT IS FURTHER ORDERED that plaintiff shall, within 30 days of the date of entry of this Opinion and Order, submit the entire \$350.00 filing fee. Failure to submit the entire filing fee will result in dismissal of this case. Any such dismissal will not, however, negate plaintiff's obligation to pay the filing fee in full.

Dated: July 9, 2010

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge