

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JESSIE E. JONES,

Plaintiff,

Case No. 1:17-cv-458

v.

Honorable Gordon J. Quist

A. HASKE et al.,

Defendants.

OPINION

This is an action filed by Plaintiff Jessie E. Jones, a prisoner presently incarcerated at Central Michigan Correctional Facility (STF) in St. Louis, Michigan. The events of which Plaintiff complains, however, occurred at the Oaks Correctional Facility (ECF) in Manistee, Michigan, during the spring of 2014.

Plaintiff filed this action on or about May 19, 2017. On May 25, 2017, the Court issued an order granting Plaintiff leave to proceed *in forma pauperis* (ECF No. 3). After that order was issued, the Court learned that Plaintiff has filed several civil actions in this Court, at least four of which have been dismissed as frivolous, malicious or for failure to state a claim. Because Plaintiff has filed at least three lawsuits that were dismissed as frivolous, malicious or for failure to state a claim, he is barred from proceeding *in forma pauperis* under 28 U.S.C. § 1915(g). The Court will order Plaintiff to pay the \$400.00 civil action filing fee applicable to those not permitted to proceed *in forma pauperis* within twenty-eight (28) days of this opinion and accompanying order. If Plaintiff fails to do so, the Court will order that his action be dismissed without prejudice. Even

if the case is dismissed, Plaintiff will be responsible for payment of the \$400.00 filing fee in accordance with *In re Alea*, 286 F.3d 378, 380-81 (6th Cir. 2002).

Discussion

The Prison Litigation Reform Act (PLRA), Pub. L. No. 104-134, 110 Stat. 1321 (1996), which was enacted on April 26, 1996, amended the procedural rules governing a prisoner's request for the privilege of proceeding *in forma pauperis*. As the Sixth Circuit has stated, the PLRA was "aimed at the skyrocketing numbers of claims filed by prisoners – many of which are meritless – and the corresponding burden those filings have placed on the federal courts." *Hampton v. Hobbs*, 106 F.3d 1281, 1286 (6th Cir. 1997). For that reason, Congress put into place economic incentives to prompt a prisoner to "stop and think" before filing a complaint. *Id.* For example, a prisoner is liable for the civil action filing fee, and if the prisoner qualifies to proceed *in forma pauperis*, the prisoner may pay the fee through partial payments as outlined in 28 U.S.C. § 1915(b). The constitutionality of the fee requirements of the PLRA has been upheld by the Sixth Circuit. *Id.* at 1288.

In addition, another provision reinforces the "stop and think" aspect of the PLRA by preventing a prisoner from proceeding *in forma pauperis* when the prisoner repeatedly files meritless lawsuits. Known as the "three-strikes" rule, the provision states:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under [the section governing proceedings *in forma pauperis*] 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.

28 U.S.C. § 1915(g). The statutory restriction "[i]n no event," found in § 1915(g), is express and unequivocal. The statute does allow an exception for a prisoner who is "under imminent danger of

serious physical injury.” The Sixth Circuit has upheld the constitutionality of the “three-strikes” rule against arguments that it violates equal protection, the right of access to the courts, and due process, and that it constitutes a bill of attainder and is *ex post facto* legislation. *Wilson v. Yaklich*, 148 F.3d 596, 604-06 (6th Cir. 1998); *accord Pointer v. Wilkinson*, 502 F.3d 369, 377 (6th Cir. 2007) (citing *Wilson*, 148 F.3d at 604-06); *Rodriguez v. Cook*, 169 F.3d 1176, 1178-82 (9th Cir. 1999); *Rivera v. Allin*, 144 F.3d 719, 723-26 (11th Cir. 1998); *Carson v. Johnson*, 112 F.3d 818, 821-22 (5th Cir. 1997).

Plaintiff has been an active litigant in the federal courts. At the time Plaintiff filed the instant action, this Court had dismissed 4 of his lawsuits for failure to state a claim. *See* (1) *Jones v. Baker*, 2:06-cv-279 (W.D. Mich. Feb. 13, 2007); (2) *Jones v. Ollis*, 2:08-cv-155 (W.D. Mich. Oct. 16, 2008); (3) *Jones v. Bonevelle*, 2:08-cv-233 (W.D. Mich. Oct. 21, 2008); and (4) *Jones v. Yoak*, 2:08-cv-255 (W.D. Mich. Dec. 5, 2008). Based on these dismissals, this Court has denied Plaintiff leave to proceed *in forma pauperis* in several cases: (1) *Jones v. Canlas*, 2:12-cv-33 (W.D. Mich. Oct. 11, 2012); (2) *Jones v. Wolak*, No. 2:12-cv-284 (W.D. Mich. Aug. 13, 2012); (3) *Jones v. L’Anse Pharmacy*, 2:12-cv-293 (W.D. Mich. Sept. 4, 2012); and (4) *Jones v. Napel*, No. 2:13-cv-282 (W.D. Mich. Oct. 4, 2013).

Moreover, Plaintiff’s allegations do not fall within the exception to the three-strikes rule because he does not allege any facts establishing that he is under imminent danger of serious physical injury. The Sixth Circuit set forth the following general requirements for a claim of imminent danger:

In order to allege sufficiently imminent danger, we have held that “the threat or prison condition must be real and proximate and the danger of serious physical injury must exist at the time the complaint is filed.” *Rittner v. Kinder*, 290 F. App’x 796, 797 (6th Cir. 2008) (internal quotation marks omitted). “Thus a prisoner’s assertion that he or she faced danger in the past is insufficient to invoke the exception.” *Id.* at 797–98; *see also* [*Taylor v. First Med. Mgmt.*, 508 F. App’x 488,

492 (6th Cir. 2012)] (“Allegations of past dangers are insufficient to invoke the exception.”); *Percival v. Gerth*, 443 F. App’x 944, 946 (6th Cir. 2011) (“Assertions of past danger will not satisfy the ‘imminent danger’ exception.”); *cf.* [*Pointer v. Wilkinson*, 502 F.3d 369, 371 n.1 (6th Cir. 2007)] (implying that past danger is insufficient for the imminent-danger exception).

In addition to a temporal requirement, we have explained that the allegations must be sufficient to allow a court to draw reasonable inferences that the danger exists. To that end, “district courts may deny a prisoner leave to proceed pursuant to § 1915(g) when the prisoner’s claims of imminent danger are conclusory or ridiculous, or are clearly baseless (i.e. are fantastic or delusional and rise to the level of irrational or wholly incredible).” *Rittner*, 290 F. App’x at 798 (internal quotation marks and citations omitted); *see also Taylor*, 508 F. App’x at 492 (“Allegations that are conclusory, ridiculous, or clearly baseless are also insufficient for purposes of the imminent-danger exception.”).

Vandiver v. Prison Health Services, Inc., 727 F.3d 580, 585 (6th Cir. 2013). A prisoner’s claim of imminent danger is subject to the same notice pleading requirement as that which applies to prisoner complaints. *Id.* Consequently, a prisoner must allege facts in the complaint from which the Court could reasonably conclude that the prisoner was under an existing danger at the time he filed his complaint, but the prisoner need not affirmatively prove those allegations. *Id.*

Here, the only allegations that implicates any danger to Plaintiff relates to May of 2014. Plaintiff alleges that during May of 2014 Defendant Haske told other ECF prisoners that Plaintiff was a prison rat. Plaintiff claims he was thereafter assaulted by an unidentified prisoner and that he lives in constant fear for his life.

Plaintiff does not identify any harm that has come to him since his transfer to STF. He does not allege any present risk imminently likely to cause him serious physical injury. He therefore falls short of demonstrating entitlement to the imminent-danger exception to the three-strikes rule.

Conclusion

In light of the foregoing, § 1915(g) prohibits Plaintiff from proceeding *in forma pauperis* in this action. Consequently, the Court’s order granting Plaintiff leave to proceed *in forma pauperis* will be vacated. Plaintiff has twenty-eight (28) days from the date of entry of this order to pay the entire civil action filing fee, which is \$400.00. If Plaintiff fails to pay the filing fee within the 28-day period, his case will be dismissed without prejudice, but he will continue to be responsible for payment of the \$400.00 filing fee.

An Order consistent with this Opinion shall be entered.

Dated: June 21, 2017

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE

SEND REMITTANCES TO THE FOLLOWING ADDRESS:

Clerk, U.S. District Court
399 Federal Building
110 Michigan Street, NW
Grand Rapids, MI 49503

All checks or other forms of payment shall be payable to “Clerk, U.S. District Court.”