

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

CALVIN BURKE,

Plaintiff,

v.

ST. LOUIS CITY JAILS, et al.

Defendants.

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No. 4:14CV2107 RLW

**MEMORANDUM AND ORDER**

Plaintiff moves for reconsideration of the Court’s order denying his motion for leave to proceed in forma pauperis. The Court denied the motion because plaintiff has three strikes and the complaint failed to show that he was in imminent danger of serious physical injury at the time he filed his complaint. Plaintiff now seeks to add new claims in an amended complaint to demonstrate that he is now in imminent danger of serious injury. However, the incidents in the amended complaint arose after the original complaint was filed. Therefore, plaintiff’s motion for reconsideration is denied.

In his amended complaint, plaintiff realleges the facts in his original complaint, and he adds new claims alleging that he is currently being denied adequate nutrition, is being denied adequate exercise, and is exposed to filthy conditions in his cell. Plaintiff moves for reconsideration on the basis that the new claims show that he is now in imminent danger.

Plaintiff says he started eating a kosher diet for religious reasons on December 17, 2014. He claims that prison officials have retaliated against him for his kosher food request by providing him with inedible food and non-kosher items. Plaintiff alleges that he regularly vomits, has lost weight, and frequently has blood in his stools.


Plaintiff alleges that he has been denied exercise and exposed to dirty conditions since December 16, 2014. Plaintiff says he is now suffering from muscle cramps and back pain as a result.

“[A]n otherwise ineligible prisoner is only eligible to proceed IFP if he is in imminent danger *at the time of filing.*” Ashley v. Dilworth, 147 F.3d 715, 717 (8th Cir. 1998) (emphasis in original). Under the prison mailbox rule, plaintiff filed this action on December 19, 2014, the date he placed it in the prison mail system. Plaintiff started the kosher diet two days before he filed this action, and he was placed in segregation three days before he filed it. Plaintiff does not allege that he was in imminent danger of serious physical injury from lack of nutrition or lack of exercise at the time of filing. He says he is imminent danger now. Because he was not in imminent danger at the time of filing, he may not proceed in forma pauperis, and his motion for reconsideration must be denied.

Accordingly,

**IT IS HEREBY ORDERED** that plaintiff’s motion for reconsideration [ECF No. 7] is **DENIED.**

Dated this 20<sup>th</sup> day of January, 2015.

  
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RONNIE L. WHITE  
UNITED STATES DISTRICT JUDGE