

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

CLINT PHILLIPS, III,)

Plaintiff,)

v.)

ST. LOUIS COUNTY, et al.,)

Defendants.)

No. 4:24-CV-00008 HEA

OPINION, MEMORANDUM AND ORDER

This matter is before the Court on the application of self-represented plaintiff Clint Phillips to proceed in the district court without prepaying fees or costs. [ECF No. 4]. For the following reasons, the Court will deny the application and dismiss the action without prejudice.

The Prison Litigation Reform Act, 28 U.S.C. § 1915(g)

The Prison Litigation Reform Act (PLRA) “enacted a variety of reforms designed to filter out the bad [prisoner] claims and facilitate consideration of the good.” *Jones v. Bock*, 549 U.S. 199, 204 (2007). One of these reforms is what is commonly known as the “three strikes” provision of 28 U.S.C. § 1915(g). *Orr v. Clements*, 688 F.3d 463, 464 (8th Cir. 2012). Section 1915(g) provides:

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.

28 U.S.C. § 1915(g). This section does not apply unless the inmate litigant has three strikes at the time he filed his lawsuit or appeal. *Campbell v. Davenport Police Dep’t*, 471 F.3d 952, 952 (8th

Cir. 2006). However, “[a] prior dismissal on a statutorily enumerated ground counts as a strike even if the dismissal is the subject of an appeal.” *Coleman v. Tollefson*, 575 U.S. 532, 537 (2015). For purposes of this section, a dismissal for failure to state a claim also constitutes a strike, whether the dismissal was with prejudice or without. *Lomax v. Ortiz-Marquez*, 140 S.Ct. 1721, 1723 (2020).

A review of this Court’s files shows that plaintiff has previously brought at least three civil actions that were dismissed for frivolity, maliciousness, or failure to state a claim upon which relief may be granted. *See Phillips v. St. Louis City Police Officers*, No. 4:17-cv-1637-HEA (E.D. Mo. Jan. 10, 2018); *Phillips v. Romeo*, No. 4:17-cv-1636-NAB (E.D. Mo. Aug. 4, 2017); *Phillips v. City of St. Louis*, No. 4:11-cv-791-CEJ (E.D. Mo. May 19, 2011). Therefore, the Court cannot permit plaintiff to proceed in forma pauperis unless he “is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

The Amended Complaint

Plaintiff filed his amended complaint on January 23, 2024, on a prisoner civil rights complaint form. [ECF No. 3]. Plaintiff brings claims for false arrest, false imprisonment, failure to protect, interference with his due process rights and excessive force relating to his arrest. Plaintiff’s claims appear to stem from the alleged mishandling of his state criminal proceeding, *State v. Clint A. Phillips III*, No. 23SL-CR12878 (21st Jud. Cir., St. Louis County Court).

Plaintiff does not allege that he is in imminent danger of serious physical injury. The Court cannot find any danger of injury arising out of his allegations. Thus, he has failed to demonstrate that the exception to the three-strikes provision in § 1915(g) applies. Therefore, the Court will deny plaintiff’s application to proceed in the district court without prepayment of filing fees and costs and will dismiss this action without prejudice to plaintiff refiling a fully-paid complaint.

Accordingly,


IT IS HEREBY ORDERED that plaintiff's application to proceed in forma pauperis [ECF No. 4] is **DENIED**. *See* 28 U.S.C. § 1915(g).

IT IS FURTHER ORDERED that pursuant to 28 U.S.C. § 1915(g), this action is **DISMISSED without prejudice** to plaintiff refiling a fully-paid complaint.

IT IS FURTHER ORDERED that plaintiff's motion for appointment of counsel [ECF No. 6] is **DENIED AS MOOT**.

An Order of Dismissal will accompany this Memorandum and Order.

Dated this 24th day of January, 2024.



HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE