

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

GREGORY L. WALLACE,

Plaintiff,

vs.

UNITED STATES A.A. OFFICE,
B.I.A. CORRECTIONS PERSONNEL,
U.S.B.O.P., MONTANA STATE
PRISON INFIRMARY,

Defendants.

CV-16-101-GF-BMM

ORDER

Plaintiff Gregory Wallace (Wallace) is a prisoner at the Montana State Prison proceeding *pro se*. Wallace has lodged a document which purports to be a civil complaint. (Doc. 2). Wallace has moved for leave to proceed in forma pauperis. (Doc. 1). In order to proceed in forma pauperis, Wallace must overcome the three strikes provision in 28 U.S.C. § 1915(g).

The three strikes provision provides as follows:

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).

Wallace has filed four civil actions that have been dismissed

for failure to state a claim. See *Wallace v. N. Cheyenne Corrections Officers, et al.*, CV-09-116-BLG-RFC (Judgment of dismissal entered on December 30, 2009); *Wallace v. Hamm, et al.*, CV-12-73-BLG-RFC (Judgment of dismissal entered on October 5, 2012); *Wallace v. Sioux-Assiniboine Corrections, et al.*, CV-15-30-GF-BMM (Judgment of dismissal entered on November 16, 2015); and *Wallace v. CIA/BIA Corrections Department, et al.*, CV-15-55-M-DLC (Judgment of dismissal entered on January 6, 2016).

Wallace has exceeded the three strikes allowed a prisoner attempting to proceed in forma pauperis in a federal lawsuit. He cannot proceed in forma pauperis in this case unless he can show that he qualifies for the “imminent danger of serious physical injury” exception in 28 U.S.C. § 1915(g).

United States Magistrate Judge John Johnston issued an Order on September 26, 2016, informing Wallace that his motion to proceed in forma pauperis would be denied unless he filed a brief on or before October 14, 2016, showing that he was in imminent danger of serious physical injury. (Doc. 4). Wallace did not respond to Judge Johnston’s Order.

Judge Johnston entered Findings and Recommendations in this matter on November 15, 2016. (Doc. 5). Judge Johnston recommended that Wallace’s

Motion to Proceed in Forma Pauperis be denied given his failure to overcome the three strikes provision in 28 U.S.C. § 1915(g).

The Court has reviewed Judge Johnston's Finding and Recommendations *de novo*. The Court finds no error in Judge Johnston's Findings and Recommendations, and adopts them in full.

Accordingly, IT IS ORDERED:

1. Wallace's Motion to Proceed in Forma Pauperis (Doc. 1) is DENIED.
2. Wallace must pay the full filing fee of \$400.00 within 21 days of the date of this Order.
3. Wallace may take no further action in this case until the filing fee is paid.
4. The Complaint shall be DISMISSED and the Clerk of Court shall close the case and enter judgment if the filing fee is not received within 30 days of the date of this Order.

DATED this 16th day of November, 2016.



Brian Morris
United States District Court Judge