

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

FILED

DEC 09 2016

Clerk, U.S. District Court
District Of Montana
Missoula

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 16-85-H-DLC-JTJ

ORDER

United States Magistrate Judge John T. Johnston entered his Findings and Recommendations on November 15, 2016, recommending denial of Plaintiff Gregory L. Wallace's ("Wallace") motion to proceed in forma pauperis in this matter. Wallace is not entitled to object to the Findings and Recommendations. *See Minetti v. Port of Seattle*, 152 F.3d 1113, 1114 (9th Cir. 1998) (providing that an application to proceed in forma pauperis is not a nondispositive matter under 28 U.S.C. § 636 (b)(1)(A)). As a result, the Court reviews the Findings and Recommendations for clear error. *See McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S.

140, 149 (1985). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

Having reviewed the Findings and Recommendations, the Court finds no clear error in Judge Johnston’s conclusion that Wallace is subject to the three strikes provision of 28 U.S.C. § 1915(g) and fails to meet the “imminent danger of serious physical injury” exception. Accordingly, the Court agrees with Judge Johnston that Wallace should not be allowed to proceed in forma pauperis. As such, Wallace must pay the \$400.00 filing fee required by 28 U.S.C. § 1914(a). If Wallace fails to pay the filing fee within 21 days from the date of this Order, the Clerk of Court is instructed close this case and enter judgment in favor of Defendants.

There being no clear error in Judge Johnston’s Findings and Recommendations, IT IS ORDERED that:

(1) Judge Johnston’s Findings and Recommendations (Doc. 6) are ADOPTED IN FULL.

(2) Wallace’s Motion to Proceed in Forma Pauperis (Doc. 1) is DENIED pursuant to Local Rule 3.1(d)(4).

(3) This matter is to be closed if Mr. Wallace fails to pay the \$400.00 filing

fee within 21 days of this Order.

Dated this 9th day of December, 2016.

A handwritten signature in cursive script, reading "Dana L. Christensen". The signature is written in black ink and is positioned above a horizontal line.

Dana L. Christensen, Chief Judge
United States District Court