

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

<b>PAUL CASTONGUAY, SR.,</b>	)	<b>4:10CV3135</b>
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>MEMORANDUM</b>
	)	<b>AND ORDER</b>
<b>JEFFREY NEWTON, Director, and</b>	)	
<b>MARK FOXHALL, Deputy Director of</b>	)	
<b>Douglas County Correctional Center,</b>	)	
	)	
<b>Defendants.</b>	)	

This matter is before the court on Plaintiff’s Motion to Appeal (Filing No. [11](#)) and Motion for Leave to Proceed In Forma Pauperis (“IFP”) (Filing No. [12](#)). For the reasons discussed below, both Motions are denied.

As the court has previously informed Plaintiff, under the provisions of [28 U.S.C. §1915\(g\)](#) (“§ 1915(g)”), a prisoner may not proceed in forma pauperis in a civil action, or appeal a judgment in a civil action, if the prisoner has, on three or more occasions, while incarcerated, brought an action or appeal in federal court that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted. [§ 1915\(g\)](#). An exception is made for prisoners who are under imminent danger of serious physical injury. *Id.* The court has already determined that Plaintiff brought three cases, while incarcerated, that were dismissed because they failed to state a claim upon which relief could be granted.<sup>1</sup>

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<sup>1</sup> *Castonguay v. Douglas County Attorney Office*, No. 8:09CV392 (D. Neb.), dismissed on April 9, 2010. (Case No. 8:09CV392, Filing Nos. [11](#) and [12](#).) *Castonguay v. Douglas County Correction Center*, No. 8:09CV225 (D. Neb.), dismissed on November 3, 2009. (Case No. 8:09CV225, Filing Nos. [14](#) and [15](#).) *Castonguay v. State of Nebraska*, No. 8:09CV221 (D. Neb.), dismissed on November 3, 2009. (Case No. 8:09CV221, Filing Nos. [15](#) and [16](#).)

Plaintiff has not shown that these cases state a claim upon which relief may be granted, nor has he shown that he faces any danger of physical injury. Thus, Plaintiff was not permitted to proceed IFP in this court, and is not entitled to proceed IFP on appeal. Moreover, Plaintiff has not paid the \$455.00 filing fee, and his appeal cannot be processed.

IT IS THEREFORE ORDERED that:

1. Plaintiff's Motion to Appeal (Filing No. [11](#)) and Motion for Leave to Proceed In Forma Pauperis (Filing No. [12](#)) are denied; and
2. The Clerk of the court is directed to forward a copy of this Memorandum and Order to the Eighth Circuit Court of Appeals.

DATED this 5<sup>th</sup> day of October, 2010.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge

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