

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JACQ AUS L. MARTIN,)
)
Plaintiff,)
)
vs.)
)
NEBRASKA DEPARTMENT OF)
CORRECTIONAL SERVICES, et al.,)
)
Defendants.)

8:06cv681

MEMORANDUM AND ORDER

This matter is before the court on filing no. 2, the application to proceed in forma pauperis ("IFP") filed by the plaintiff, JacQaus L. Martin. The application to proceed IFP is denied. When three civil cases filed by a prisoner have been dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted, the "three strikes" provision of the PLRA provides that the prisoner may not bring a new civil action or appeal without paying the full filing fee at the time of filing, i.e., no installments. The only exception to this rule is if the prisoner is in "imminent danger of serious physical injury." 28 U.S.C. § 1915(g) (i.e., prospective danger, not past events). As more than three of the plaintiff's cases have been dismissed as frivolous, malicious, or for failure to state a claim on which relief may be granted, and as the exception for imminent danger does not apply to this case, the plaintiff is not eligible to proceed IFP by virtue of 28 U.S.C. § 1915(g). The facts as described by the plaintiff may, however, constitute the kind of assault, battery, retaliation or other tort which may be asserted in a state court.

THEREFORE, IT IS ORDERED:

1. That filing no. 2, the plaintiff's application to proceed IFP, is denied; and
2. That the plaintiff shall pay the full \$350 filing fee to the Clerk of Court by no later than November 15, 2006, or this case will be subject, without further notice, to dismissal without prejudice.

October 31, 2006.

BY THE COURT:

s/ Richard G. Kopf
United States District Judge