

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

LAVERN BERRYHILL,)	
)	
Plaintiff,)	
)	
v.)	No. CIV 10-247-JHP-SPS
)	
JUDGE JAMES H. PAYNE, et al.,)	
)	
Defendants,)	

OPINION AND ORDER
DENYING LEAVE TO PROCEED IN FORMA PAUPERIS

Plaintiff, an inmate seeking to commence an appeal to the Tenth Circuit Court of Appeals, has filed a motion for leave to proceed *in forma pauperis*. A review of plaintiff's litigation history, however, indicates he has accumulated at least three prior civil rights actions that count as "strikes," pursuant to 28 U.S.C. § 1915(g):

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 harm.

28 U.S.C. § 1915(g). Plaintiff does not assert in his motion that he is in imminent danger of serious physical harm, so that provision of the "three strikes" rule does not apply.

In *Berryhill v. Poppell*, No. CIV-99-407-D (W.D. Okla. May 25, 1999), the United States District Court for the Western District of Oklahoma found that plaintiff had filed 11 previous lawsuits pursuant to 42 U.S.C. § 1983. *Id.*, slip op. at 1. Three of the 11 cases were dismissed for failure to state a claim or as frivolous, and one of the dismissals was affirmed on appeal:

Berryhill v. Beckman, No. CIV-85-1364-E, *aff'd*, No. 86-1533 (10th Cir. Oct. 22, 1986) (motion to dismiss under Rule 12(b)(6) and 28 U.S.C. § 1915(d) granted); *Berryhill v. Maynard*, No. CIV 88-1034-T (motion to dismiss under Rule 12(b)(6) and 28 U.S.C. § 1915(d) granted); and *Berryhill v. Faulk*, No. CIV-92-1705-T (dismissed upon filing for failure to state a claim).

Berryhill v. Poppell, No. CIV-99-407-D, slip op. at 2 n.1.

ACCORDINGLY, plaintiff's motion for leave to proceed *in forma pauperis* on appeal [Docket #9] is DENIED. Plaintiff is directed to forward the \$455.00 filing fee to the Court Clerk within twenty (20) days. The agency having custody of plaintiff is ordered to release funds from plaintiff's accounts, including plaintiff's trust account, for payment of the filing fee.

IT IS SO ORDERED this 28th day of October 2010.


James H. Payne
United States District Judge
Eastern District of Oklahoma