

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

DAVID L. BROWN, JR.,)

Plaintiff,)

v.)

**CINDY SMITH and
JANE DOE,**)

Defendants,)

No. CIV 11-443-RAW

FILED

JAN 13 2012

WILLIAM J. GUPPHEE
Clerk, U.S. District Court

By _____
Deputy Clerk

OPINION AND ORDER
DENYING LEAVE TO PROCEED IN FORMA PAUPERIS

Plaintiff David L. Brown, Jr., a former prisoner appearing pro se and seeking to bring a civil rights action, has filed a motion for leave to proceed *in forma pauperis* and supporting affidavit in conformance with 28 U.S.C. § 1915(a). A review of his 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 injury.

28 U.S.C. § 1915(g).

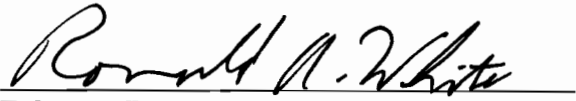
Brown v. Branson, No. CIV 94-003-JHP (E.D. Okla. Sept. 27, 1994), *aff'd*, No. 94-7153 (10th Cir. June 5, 1995), was dismissed for qualified immunity and failure to show a constitutional claim. *Brown v. Barnhill*, No. CIV 94-034-JHP (E.D. Okla. Sept. 27, 1994), *aff'd*, No. 94-7149 (10th Cir. April 6, 1995), was dismissed for the same reasons as CIV 94-

003-JHP. In addition, *Brown v. Green*, No. CIV 94-521-FHS-JHP (E.D. Okla. June 14, 1995), was dismissed because the claims were barred by res judicata. Although plaintiff has been released from custody, the three-strike rule still applies, because he “brought” this action while incarcerated. See *Harris v. City of New York*, 607 F.3d 18, 22 (2d Cir. 2010) (“Had Congress intended that the three strikes rule would no longer apply once a prisoner had been released, it would have written the statutory provision differently.”).

Plaintiff alleges in his complaint that the Court Clerk for Pittsburgh County and a certified court reporter for the same county denied him due process, equal protection of the law, and access to the courts with respect to his petition for a writ of habeas corpus. The court, however, finds his allegations fail to set forth a credible claim that he is in imminent danger of serious physical injury and that he qualifies for the exception in 28 U.S.C. § 1915(g).

ACCORDINGLY, plaintiff’s motion for leave to proceed *in forma pauperis* [Docket No. 2] is DENIED. Plaintiff is directed to forward the **\$350.00** filing fee to the Court Clerk within twenty (20) days. Failure to comply with this order will result in dismissal of this action.

IT IS SO ORDERED this 13th day of January 2012.


RONALD A. WHITE
UNITED STATES DISTRICT JUDGE