

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

CHRISTOPHER JUSTICE #2065124 §
v. § CIVIL ACTION NO. 5:17cv20
TEXAS DEPARTMENT OF CRIMINAL §
JUSTICE, ET AL.

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Christopher Justice, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court referred the case to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Plaintiff has filed at least three previous lawsuits or appeals which have been dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted. *See Justice v. Bexar County Jail, et al.*, Civil Action No. 5:16-cv-449 (W.D. Tex., dismissed as frivolous June 1, 2016); *Justice v. Texas Board of Pardons and Paroles*, Civil Action No. 5:16-cv-1162 (W.D. Tex., dismissed as frivolous November 23, 2016); *Justice v. Garza West Prison*, Civil Action No. 5:16-cv-892 (W.D. Tex., dismissed as frivolous October 27, 2016); *Justice v. Bexar County Jail, et al.*, Civil Action No. 5:16-cv-1088 (W.D. Tex., dismissed as frivolous November 28, 2016). As a result, Plaintiff may not proceed under the *in forma pauperis* statute unless he shows he is in imminent danger of serious physical injury at the time of the filing of his lawsuit. 28 U.S.C. §1915(g); *Baños v. O'Guin*, 144 F.3d 883, 885 (5th Cir. 1998).

In his complaint, Plaintiff asserts Telford Unit law librarian E. Wells has engaged in mail tampering and denied Plaintiff legal supplies, thus violating Plaintiff's right of access to court. Docket No. 1 at 1. He states he is in imminent danger as a result of exposure to second hand smoke from synthetic marijuana, but he offers no other details or factual support for this contention, nor does he show how this assertion relates to the allegations of his complaint. *Id.*

After review of the pleadings, the Magistrate Judge issued a Report recommending the lawsuit be dismissed as barred by §1915(g). Docket No. 6 at 4. Plaintiff received a copy of this Report but filed no objections thereto; accordingly, he is barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). It is accordingly

ORDERED that the Report of the Magistrate Judge (Docket No. 6) is **ADOPTED** as the opinion of the District Court. It is further

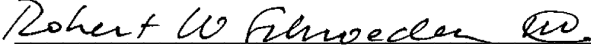
ORDERED that the Plaintiff's application for leave to proceed *in forma pauperis* is **DENIED** and the above-styled civil action is **DISMISSED WITH PREJUDICE** as to the refiling of another *in forma pauperis* lawsuit raising the same claims as herein presented, but without prejudice to the refiling of this lawsuit without seeking *in forma pauperis* status and upon payment of the statutory filing fee. It is further

ORDERED that should the Plaintiff pay the full filing fee within 15 days after the date of entry of final judgment in this case, he shall be allowed to proceed in the lawsuit as though

the full fee had been paid from the outset. Because Plaintiff is ineligible to proceed *in forma pauperis*, the full filing fee is \$400.00. Payment of the full filing fee will not affect a determination as to whether the lawsuit is frivolous, malicious, or fails to state a claim upon which relief may be granted. 28 U.S.C. §1915A. It is further

ORDERED that any and all motions which may be pending in this action are hereby **DENIED**.

SIGNED this 18th day of July, 2017.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE