

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

JODY FORD MCCREARY, #1694118           §  
VS.   §           CIVIL ACTION NO. 6:16cv1275  
ELDRICK BIRDOW                       §

ORDER OF DISMISSAL

Plaintiff Jody Ford McCreary, an inmate confined in the Texas prison system, proceeding *pro se* and seeking to proceed *in forma pauperis*, brings this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The complaint was referred to United States Magistrate Judge John D. Love, who issued a Report and Recommendation (Dkt. #9) concluding that the lawsuit should be dismissed with prejudice for purposes of *in forma pauperis* proceedings pursuant to the “three strikes” provisions of 28 U.S.C. § 1915(g). Mr. McCreary has filed objections (Dkt. #11).

Mr. McCreary alleges in his objections that Magistrate Judge Love is biased against him and that he does not have “three strikes.” Nonetheless, all of the cases and appeals that were dismissed as frivolous and/or for failure to state a claim were listed in the Report and Recommendation. The court has conducted a *de novo* review of the cases and appeals and has determined that Mr. McCreary has accumulated at least “three strikes.”

Mr. McCreary complains about an event that occurred on January 4, 2016. He did not file the present lawsuit until November 8, 2016. An inmate may not file any lawsuits or appeals *in forma pauperis* if he has three or more lawsuits or appeals previously dismissed as “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). Mr. McCreary claims he was the victim of excessive use of force, but he has not shown that he was under imminent danger of serious physical injury at the time he filed the lawsuit in order to trigger the exception provided by § 1915(g).

The Report of the Magistrate Judge, which contains his proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by Mr. McCreary to the Report, the court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and Mr. McCreary’s objections are without merit. It is therefore

**ORDERED** that the complaint is **DISMISSED** with prejudice for purposes of *in forma pauperis* proceedings pursuant to 28 U.S.C. § 1915(g). It is further

**ORDERED** that Mr. McCreary’s motion to proceed *in forma pauperis* (Dkt. #2) is **DENIED**. Mr. McCreary may resume the lawsuit if he pays the entire filing fee of \$400 within thirty days from the entry of the Final Judgment. It is finally

**ORDERED** that all motions not previously ruled on are **DENIED**.

So **ORDERED** and **SIGNED** this **14** day of **December, 2016**.



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Ron Clark, United States District Judge