

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

JOE PARKER	§	
VS.	§	CIVIL ACTION NO. 9:14cv116
GARY CURRY, ET AL.	§	

MEMORANDUM OPINION

Plaintiff Joe Parker, an inmate confined at the Estham Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed this civil action pursuant to 42 U.S. C. § 1983 against Gary Curry, S.D. Allen and Amanda Phillips. Plaintiff seeks leave to proceed *in forma pauperis* in this matter.¹

Discussion

Title 28 U.S.C. § 1915(g) prohibits prisoners from repeatedly filing frivolous or malicious complaints on an *in forma pauperis* basis, as well as complaints that fail to state a claim upon which relief may be granted. Section 1915(g) provides as follows:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action [*in forma pauperis*]... if the prisoner has, on three or more occasions ... 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.

Prior to the date on which he filed this lawsuit, at least three lawsuits filed by plaintiff were dismissed as frivolous or for failure to state a claim upon which relief may be granted.² As a result, Section 1915(g) is applicable.

¹ This case was directly assigned to the undersigned magistrate judge pursuant to this district's General Order 14-10. Plaintiff has provided voluntary written consent to have the assigned magistrate judge conduct all further proceedings in this case, including trial and entry of final judgment in accordance with 28 U.S.C. § 636. The defendants in this action have not been served; thus, they are not parties to the action at this time. As a result, their consent is not needed for the undersigned to make a final determination in this matter. *See Neals v. Norwood*, 59 F.3d 530, 532 (5th Cir. 1995).

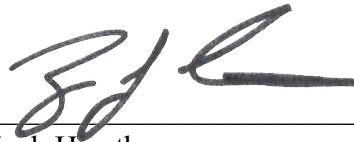
² *Parker v. Taylor*, No. 6:96cv1012 (E.D. Tex. Mar. 21, 1997) (dismissed as frivolous); *Parker v. Unknown Party*, No. 4:00cv3240 (S.D. Tex. Oct. 25, 2000) (dismissed as frivolous); *Parker v. Darmofal*, No. 9:08cv167, No. 9:08cv169 (E.D. Tex. Oct. 14, 2008) (dismissed as frivolous and for failure to state a claim).

Plaintiff alleges he was improperly convicted of a prison disciplinary offense and has been retaliated against. The allegations set forth in plaintiff's complaint do not demonstrate that he is in "imminent danger of serious physical injury." Section 1915(g) therefore bars plaintiff from proceeding further with this lawsuit on an *in forma pauperis* basis. This lawsuit should therefore be dismissed.

Conclusion

For the reasons set forth above, this lawsuit will be dismissed without prejudice pursuant to 28 U.S.C. § 1915(g). An appropriate final judgment shall be entered.

SIGNED this 27th day of October, 2014.

A handwritten signature in black ink, appearing to read 'Zack Hawthorn', written over a horizontal line.

Zack Hawthorn
United States Magistrate Judge