

United States District Court  
Southern District of Texas

**ENTERED**

June 06, 2017

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

DONIS LEMOND DENBY,  
TDCJ #00655223,

Plaintiff,

VS.

FNU BOSCO, *et al*,

Defendants.

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CIVIL ACTION NO. 3:16-CV-158

**ORDER OF DISMISSAL**

Plaintiff, Donis LeMond Denby (TDCJ #00655223), is an inmate in the custody of the Texas Department of Criminal Justice - Correctional Institutions Division (“TDCJ”). He filed a civil rights complaint in the Tyler Division of the Eastern District of Texas alleging, among other things, that he was sexually assaulted by a male officer while being treated at the University of Texas Medical Branch (“UTMB”) in Galveston (Dkt. 1). Judge Mitchell and Judge Schneider severed the claims stemming from the events at UTMB from the rest of the suit and transferred the UTMB claims to this division (Dkt. 10 and Dkt. 29). Just after the transfer, the Court granted Denby’s request for leave to amend his complaint (Dkt. 37).

Denby is a three-strike filer, meaning that he has, while incarcerated, filed at least three lawsuits that were dismissed for being frivolous, for being malicious, or for failing

to state a claim upon which relief may be granted.<sup>1</sup> See 28 U.S.C. § 1915(g). As a result, Denby may not bring this action *in forma pauperis* (“IFP”) unless he was under imminent danger of serious physical injury at the time he filed his complaint. *Banos v. O’Guin*, 144 F.3d 883, 885 (5th Cir. 1998). The three-strikes statute uses language that is mandatory, not discretionary; and, indeed, Judge Clark, on the recommendation of Judge Mitchell, revoked Denby’s IFP status in the case from which this matter was severed after Denby failed to demonstrate his entitlement to the imminent-danger exception. See Eastern District of Texas Case Number 6:15-CV-876 at Dkt. 56 and Dkt. 62.

Because Denby has not paid the filing fee, the Court ordered him to show cause why this case should not be dismissed (Dkt. 40). In his response, Denby presented the same arguments that he made to Judge Clark and Judge Mitchell regarding why he thinks the imminent-danger exception applies (Dkt. 41). See Eastern District of Texas Case Number 6:15-CV-876 at Dkt. 59 and Dkt. 61. Judge Clark and Judge Mitchell have thoroughly addressed Denby’s arguments, and the Court concurs with their analysis. See Eastern District of Texas Case Number 6:15-CV-876 at Dkt. 56 and Dkt. 62.

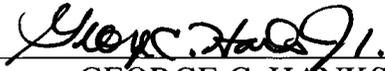
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<sup>1</sup> The three strikes were Northern District of Texas Case Numbers 2:10-CV-70; 2:13-CV-6; and 7:11-CV-157.

The Court **ORDERS** that this case is **DISMISSED WITHOUT PREJUDICE** as barred by 28 U.S.C. § 1915(g). The case will be reopened if Denby pays the filing fee in full within thirty days of the date of this order.

The Clerk of this Court shall send a copy of this Order to the parties.

SIGNED at Galveston, Texas, on June 6, 2017.

  
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GEORGE C. HANKS, JR.  
UNITED STATES DISTRICT JUDGE