

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CLEO CHESTER MCGREW, JR,

Plaintiff,

VS.

ROBERT E BELL,

Defendant.

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CIVIL ACTION NO. 4:13-CV-1841

OPINION ON DISMISSAL

Plaintiff Cleo Chester McGrew, Jr., a state inmate confined in the Texas Department of Criminal Justice - Correctional Institutions Division's (TDCJ-CID) LeBlanc Unit in Beaumont, Texas, has filed a *pro se* civil rights suit alleging retaliatory prosecution. (Docket No. 1.) The sole defendant named in the Complaint is Robert E. Bell, Jackson County District Attorney. Plaintiff has also filed a motion to proceed *in forma pauperis*. (Docket No. 2.)

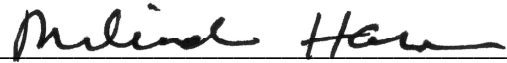
Under 28 U.S.C. § 1915(g), a prisoner cannot file a civil action *in forma pauperis* in federal court if, on three or more prior occasions, while incarcerated, he brought an action that was dismissed for being frivolous, malicious, or failing to state a claim upon which relief may be granted. The only exception to this revocation of an inmate's privilege to proceed *in forma pauperis* is if he is in immediate danger of serious physical harm. *Banos v. O'Guin*, 144 F.3d 883, 884 (5th Cir. 1998).

Plaintiff's present suit is clearly subject to the three-strikes bar under Section 1915(g) because his Complaint does not indicate that he is in any danger and his litigation history reveals that he has previously had at least three cases dismissed as frivolous in the federal courts. *See McGrew v. Denton*, No. 9:02-cv-0007 (S.D. Tex.) (dismissed as frivolous Jun. 24, 2002);

McGrew v. Townsend, No. 9:02-cv-108 (S.D. Tex.) (dismissed as frivolous Sept. 16, 2003);
McGrew v. Bell, No. 4:11-cv-1753 (S.D. Tex.) (dismissed as frivolous Jun. 16, 2011).

Accordingly, it is ORDERED that Plaintiff's Motion to Proceed *In Forma Pauperis* (Docket No. 2) is DENIED and this case is DISMISSED WITHOUT PREJUDICE under 28 U.S.C. § 1915(g), subject to refile with payment of the full \$400 filing fee. Any pending motions are further DENIED.

SIGNED at Houston, Texas, this 12th day of February, 2014.

A handwritten signature in black ink, appearing to read "Melinda Harmon", is written over a horizontal line.

MELINDA HARMON
UNITED STATES DISTRICT JUDGE