

United States District Court  
Southern District of Texas

**ENTERED**

September 30, 2016

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

DEVIN PAUL COLE,  
(TDCJ-CID #2072204)

Plaintiff,

vs.

HARRIS COUNTY, *et al.*,

Defendants.

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CIVIL ACTION NO. H-16-2716

**MEMORANDUM ON DISMISSAL**

Devin Paul Cole, a Texas Department of Criminal Justice inmate, sued various Harris County Jail (“HCJ”) officials and unidentified medical personnel, alleging a failure to protect his safety. Cole represents himself and seeks leave to proceed without prepaying costs. The threshold issue is whether his claims are barred by the three-strikes provision of 28 U.S.C. § 1915(g).

Cole alleges that three inmates assaulted him in March 2016, while he was at the HCJ. Cole alleges that HCJ officials failed to consider his race, health, and other factors when assigning him to a cell block. He also alleges that HCJ medical personnel did not treat him properly after the assault. He was transferred to the Lychner State Jail in July 2016, where, he alleges, prison medical personnel diagnosed a broken jaw from the assault. Cole seeks an unspecified amount in compensatory and punitive damages.

A prisoner may not bring a civil action without prepaying costs in federal court if, while the prisoner was incarcerated, three or more of his civil actions or appeals were dismissed as frivolous or malicious or for failure to state a claim upon which relief may be granted, unless he was in imminent danger of serious physical injury. 28 U.S.C. § 1915(g). Before filing this action, Cole had

at least three suits dismissed as frivolous: *Cole v. Moore*, Civil action No. 1:99-0558 (dismissed as frivolous on September 7, 1999)(E.D. Tex.); *Cole v. Bush*, Civil Action No. 1:99-0337(dismisssed as frivolous on August 2, 1999)(E.D. Tex.); and *Cole v. Brent*, Civil Action No. 1:91-0004 (dismissed as frivolous on April 24, 1991)(E.D. Tex.). Cole has not alleged, nor does his complaint demonstrate, that he is in imminent danger of serious physical injury. He is barred under 28 U.S.C. § 1915(g) from proceeding in this action.

Cole's motion to proceed without prepaying costs, (Docket Entry No. 2), is denied. His complaint is dismissed under 28 U.S.C. § 1915(g). Any pending motions are denied. Cole is warned that continued frivolous filings may result in the imposition of sanctions.

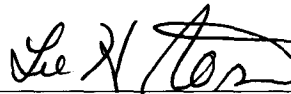
The Clerk will provide a copy of this order by regular mail, facsimile transmission, or e-mail to:

(1) the TDCJ - Office of the General Counsel, Capitol Station, P.O. Box 13084, Austin, Texas, 78711, Fax: 512-936-2159;

(2) the Inmate Trust Fund, P.O. Box 629, Huntsville, Texas 77342-0629, Fax: 936-437-4793; and

(3) the District Clerk for the Eastern District of Texas, Attention: Manager of the Three-Strikes List, [Lori\\_stover@txed.uscourts.gov](mailto:Lori_stover@txed.uscourts.gov).

SIGNED on September 29, 2016, at Houston, Texas.



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Lee H. Rosenthal  
United States District Judge