

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

KENNETH NEWKIRK,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 3:21CV95-HEH
	)	
DIRECTOR, DEPT. OF CORR.,	)	
	)	
Defendant.	)	

**MEMORANDUM OPINION  
(Dismissing Action Without Prejudice)**

Plaintiff, a Virginia inmate, submitted this action and requested leave to proceed *in forma pauperis*.<sup>1</sup> The pertinent statute provides:

In no event shall a prisoner bring a civil action [*in forma pauperis*] if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, 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.

28 U.S.C. § 1915(g). Plaintiff has at least three other actions or appeals that have been dismissed as frivolous or for failure to state a claim. *See, e.g., Newkirk v. Shaw*, No. 3:14CV426-HEH, 2014 WL 4161991, at \*3 (E.D. Va. Aug. 19, 2014); *Newkirk v. Cir. Ct. of Hampton*, No. 3:14CV372-HEH, 2014 WL 4072212, at \*3 (E.D. Va. Aug. 14, 2014); *Newkirk v. Lerner*, No. 3:13CV364-HEH, 2014 WL 587174, at \*2-5 (E.D. Va.

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<sup>1</sup> Although Plaintiff submitted this action on the form for filing a petition for a writ of habeas corpus, it is clear that it is simply another frivolous civil action. Plaintiff does not challenge his conviction or sentence, but the collection of filing fees for prior civil actions that he filed.

Feb. 14, 2014); *Newkirk v. Chappell*, No. 3:13CV73-HEH, 2013 WL 5467232, at \*3 (E.D. Va. Sept. 30, 2013). Plaintiff's current complaint does not suggest that Plaintiff is in imminent danger of serious physical harm.

Accordingly, his request to proceed *in forma pauperis* will be DENIED. The action will be dismissed without prejudice.

Plaintiff remains free to submit a new complaint with the full \$402 filing fee. The Court will process such a complaint as a new civil action.

An appropriate Order will accompany this Memorandum Opinion.

It is so ORDERED.



/s/

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HENRY E. HUDSON  
SENIOR UNITED STATES DISTRICT JUDGE

Date: March 16, 2021  
Richmond, Virginia