

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

KENNETH NEWKIRK,

Plaintiff,

v.

Civil Action No. **3:24CV134 (RCY)**

**DIRECTOR, DEPARTMENT OF
CORRECTIONS,**

Defendant.

MEMORANDUM OPINION

Plaintiff, a Virginia inmate, submitted this “EMERGENCY HEARING REQUEST.” (ECF No. 1.) Plaintiff apparently requests that this Court order an emergency hearing “to discuss the seriously bad problems that [he is] facing” with respect to filing an appeal of the denial of a petition for rehearing in state court. (*Id.* at 1–2 (capitalization corrected).) While it appears that Plaintiff wishes to file a complaint pursuant to 42 U.S.C. § 1983, and that complaint would appropriately be filed in the United States District Court for the Western District of Virginia,¹ the Court will not transfer the action because Plaintiff did not pay the \$405 filing fee. 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

¹ Plaintiff complains about conditions in Wallens Ridge State Prison which is in the Western District of Virginia.

WL 4161991, *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. 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 plausibly suggest that Plaintiff is in imminent danger of serious physical harm. Accordingly, Plaintiff’s request to proceed *in forma pauperis* will be DENIED, and the action will be DISMISSED. Plaintiff may file this action in the United States District Court for the Western District of Virginia accompanied by the \$405 filing fee.

An appropriate Order shall accompany this Memorandum Opinion.

Date: March 13, 2024
Richmond, Virginia



/s/ Roderick C. Young
United States District Judge