

DEC 15 2015

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

ANTHONY SMITH,)	CASE NO. 7:15CV00669
)	
Plaintiff,)	
v.)	MEMORANDUM OPINION
)	
V. F. CONTROLS, <u>ET AL.</u> ,)	By: Glen E. Conrad
)	Chief United States District Judge
Defendants.)	

Anthony Smith, a Virginia inmate proceeding pro se, filed this civil action, claiming that the defendants have violated his patent rights.¹ Smith has also moved for permission to proceed in forma pauperis under 28 U.S.C. § 1915(b), without prepayment of the civil filing fee. After review of the record, the court finds that the action, filed in forma pauperis, must be summarily dismissed without prejudice based on Smith's prior civil actions that have been dismissed.

The Prison Litigation Reform Act of 1995 substantially amended the in forma pauperis statute, 28 U.S.C. § 1915. The purpose of the Act was to require all prisoner litigants suing government entities or officials to pay filing fees in full, either through prepayment or through installments withheld from the litigant's inmate trust account. § 1915(b). Section 1915(g) denies the installment payment method to prisoners who have "three strikes" — those prisoners who have had three previous cases or appeals dismissed as frivolous, malicious, or for failure to state a claim, unless the three-striker inmate shows "imminent danger of serious physical injury." § 1915(g).

Smith has brought such actions or appeals on three or more prior occasions. See Smith v. McClure, No. 6:10CV00022 (W.D. Va. June 8, 2010) (dismissed with prejudice for failure to

¹ Smith filed this action in the United States District Court for the Western District of Kentucky, but because the cause of action occurred within the jurisdiction of this court, the case was transferred here.

state a claim); Smith v. McClure, et al, Civil Action No. 7:14-cv-00356 (W.D. Va. July 22, 2014) (dismissed under 28 U.S.C. 1915(e)(2)(B) as frivolous and malicious); Smith v. McClure, No. 7:14CV00285 (W.D. Va. June 10, 2014) (dismissed under 28 U.S.C. 1915(e)(2)(B) for failure to state a claim). Accordingly, Smith may proceed in forma pauperis (without prepayment of the filing fee) only if he shows that he faces imminent danger of serious physical injury related to his current claims. § 1915(g). Smith's allegations fail to show that the alleged patent violations of which he complains in this action have placed him in imminent danger of physical harm.

Because the records reflect that Smith has at least three "strikes" under § 1915(g) and has not demonstrated that he is in imminent danger of physical harm, the court denies Smith the opportunity to proceed in forma pauperis and dismisses the complaint without prejudice under § 1915(g).² An appropriate order will issue this day.

The Clerk is directed to send copies of this memorandum opinion and accompanying order to plaintiff.

ENTER: This 15th day of December, 2015.



Chief United States District Judge

² Moreover, Smith's current claims, essentially equivalent to the claims in his prior civil actions, are malicious, legally frivolous, and fail to state any actionable claim.