

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

DAVID L. SMITH,)	
Plaintiff,)	Civil Action No. 7:17cv00349
)	
v.)	
)	By: Elizabeth K. Dillon
JACKSON KISER, <i>et al.</i> ,)	United States District Judge
Defendants.)	

MEMORANDUM OPINION

David L. Smith, a prisoner proceeding *pro se*, filed a civil rights action pursuant to 42 U.S.C. § 1983. Smith has not submitted a filing fee with his complaint, and therefore the court liberally construes his action as a request to proceed *in forma pauperis*. However, at least three of Smith’s previous actions have been dismissed as frivolous.¹ Therefore, Smith may not proceed with this action unless he either pays the \$400.00 filing fee or shows that he is “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

Because Smith has neither prepaid the filing fee nor demonstrated that he is “under imminent danger of serious physical injury,”² the court dismisses his complaint without prejudice pursuant to 28 U.S.C. § 1915(g).

Entered: July 24, 2017.

/s/ Elizabeth K. Dillon
Elizabeth K. Dillon
United States District Judge

¹ See, e.g., *Smith v. State of North Carolina*, Action No. 5:01-ct-00033-BR (E.D.N.C. Feb. 28, 2011); *Smith v. County of Wake*, Action No. 5:03-ct-00561-BO (E.D.N.C. Sept. 5, 2003); *Smith v. State of North Carolina*, Action No. 5:03-CT-611-BO (E.D.N.C. Sept. 5, 2003); *Smith v. State of North Carolina*, Action No. 5:03-ct-00688-BR (E.D.N.C. Sept. 25, 2003).

² Smith alleges that, from 1996 to 2017, United States District Judge Jackson Kiser, LexisNexis attorney Nancy Nash, and “Lexis Publishings” conspired to print North Carolina Criminal Procedure legal manuals which substituted the “essential elements of the N.C. habitual felon statute” with “elements of the N.C. habitual felon declaration,” and they “ordered dismissal of pro-se colorable 1983 complaint plagued with curable defects without allowing amendment opportunity.” Based on his pleading, the court finds that Smith has not demonstrated that he is in imminent danger of serious physical harm.