

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
MICHIGAN, NORTHERN DIVISION

Harvey Preston v. Terry Wilkins et al.

Preston v. Wilkins · No. 2:25-cv-272 · Decided March 16, 2026

SUMMARY

The United States District Court for the Western District of Michigan denied Harvey Preston leave to proceed in forma pauperis under the Prison Litigation Reform Act’s three-strikes provision, 28 U.S.C. § 1915(g). The court concluded that Preston had not plausibly alleged an imminent danger of serious physical injury and had not paid the required filing fees. The action was dismissed without prejudice, with leave to refile upon payment of the full civil action filing fees.

CASE DETAILS

COURT	United States District Court for the Western District of Michigan, Northern Division
WRITING FOR THE COURT	Hala Y. Jarbou
JURISDICTION	United States District Court for the Western District of Michigan, Northern Division
DECIDED	March 16, 2026
DOCKET	2:25-cv-272
DISPOSITION	dismissed
PROCEDURAL POSTURE	A state prisoner brought a civil-rights action under 42 U.S.C. § 1983 and moved to proceed in forma pauperis. The district court denied in forma pauperis status under the Prison Litigation Reform Act's three-strikes provision and dismissed the action without prejudice because the plaintiff had not paid the filing fees.
STANDARD OF REVIEW	The court evaluated whether Plaintiff qualified for in forma pauperis status under 28 U.S.C. § 1915(g), applying the statutory three-strikes rule and determining whether the complaint plausibly alleged an imminent danger of serious physical injury.
PRECEDENTIAL VALUE	unpublished district court opinion; precedential status unknown
PARTIES	Harvey Preston v. Terry Wilkins et al.

TOPICS

civil procedure

prisoners rights

section 1983

due process

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether Plaintiff was barred by 28 U.S.C. § 1915(g) from proceeding in forma pauperis because he had accumulated at least three qualifying dismissals.
2. Whether Plaintiff adequately alleged that he was under imminent danger of serious physical injury so as to invoke the exception to the three-strikes rule.
3. Whether dismissal without prejudice was the proper disposition when Plaintiff was denied in forma pauperis status and had not paid the filing fees.

HOLDINGS

1. Plaintiff was barred from proceeding in forma pauperis because he had brought at least three prior actions that were dismissed as frivolous, malicious, or for failure to state a claim.
2. Plaintiff failed to allege facts sufficient to show that he was under an imminent danger of serious physical injury when he filed the complaint.
3. The action was properly dismissed without prejudice because Plaintiff had not paid the filing fees after being denied in forma pauperis status.

KEY QUOTATIONS

“In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under [the section governing proceedings in forma pauperis] if the prisoner is 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.” (Discussion)

“In order to allege sufficiently imminent danger, we have held that “the threat or prison condition must be real and proximate and the danger of serious physical injury must exist at the time the complaint is filed.”” (Discussion)

“Plaintiff asks the Court to fabricate plausibility to his claim from mere ambiguity; but ambiguity does not support an inference of real and proximate danger of serious physical injury.” (Discussion)

FACTUAL BACKGROUND

Plaintiff, a Michigan state prisoner housed at the Baraga Correctional Facility, alleged that a threat or “hit” against his life originated at the Ionia Correctional Facility and followed him to Baraga. He alleged that prison officials denied his requests for protective custody and that his food and medication had been poisoned, but he provided no specific facts supporting those allegations. The court also identified at least three prior actions dismissed on grounds qualifying as strikes under § 1915(g).

PROCEDURAL HISTORY

Plaintiff filed a § 1983 complaint and an application to proceed in forma pauperis. The court determined that Plaintiff had at least three prior actions dismissed as frivolous, malicious, or for failure to state a claim, and that he did not satisfy the imminent-danger exception. Because Plaintiff had not paid the applicable filing fees, the court dismissed the action without prejudice and stated that he could refile by paying the full fees.

DISPOSITION

dismissed

CASES CITED

- In re Alea, 286 F.3d 378, 380 (6th Cir. 2002)
- Hampton v. Hobbs, 106 F.3d 1281, 1286, 1288 (6th Cir. 1997)
- Wilson v. Yaklich, 148 F.3d 596, 604-06 (6th Cir. 1998)
- Rittner v. Kinder, 290 F. App'x 796, 797-98 (6th Cir. 2008)
- Taylor v. First Med. Mgmt., 508 F. App'x 488, 492 (6th Cir. 2012)
- Percival v. Gerth, 443 F. App'x 944, 946 (6th Cir. 2011)
- Pointer v. Wilkinson, 502 F.3d 369, 371 n.1 (6th Cir. 2007)
- Vandiver v. Prison Health Services, Inc., 727 F.3d 580, 585 (6th Cir. 2013)
- Jackson v. Bolton, No. 23-1701, 2024 WL 314530, at *2 (6th Cir. Jan. 24, 2024)
- Dupree v. Palmer, 284 F.3d 1234, 1236 (11th Cir. 2002)
- McGore v. Wrigglesworth, 114 F.3d 601, 611 (6th Cir. 1997)
- Preston v. White, No. 2:03-cv-249 (W.D. Mich. Jan. 7, 2004)
- Preston v. Duney, No. 2:03-cv-253 (W.D. Mich. Jan. 6, 2004)
- Preston v. Burch, No. 1:03-cv-581 (W.D. Mich. Dec. 5, 2003)
- Preston v. Bonn, No. 1:25-cv-389 (W.D. Mich. Aug. 28, 2025)
- Preston v. Bonn et al., No. 1:25-cv-29 (W.D. Mich. Mar. 7, 2025)
- Preston v. Hoffman et al., No. 2:24-cv-179 (W.D. Mich. Nov. 22, 2024)
- Preston v. Bonn et al., No. 1:24-cv-588 (W.D. Mich. July 2, 2024)
- Preston v. Davids, No. 1:24-cv-416 (W.D. Mich. May 7, 2024)
- Preston v. Rewerts et al., No. 1:24-cv-304 (W.D. Mich. Apr. 25, 2024)
- Preston v. Russell, No. 1:21-cv-312 (W.D. Mich. Apr. 29, 2021)
- Preston v. Davids, No. 1:18-cv-803 (W.D. Mich. Aug. 8, 2018)
- Preston v. Smith et al., No. 1:18-cv-84 (W.D. Mich. Feb. 2, 2018)
- Preston v. U.P. Health Sys. et al., No. 2:16-cv-201 (W.D. Mich. Sept. 30, 2016)

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