

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
MISSOURI, EASTERN DIVISION

Deandre Walton v. Gregory N. Smith

Walton v. Smith, No. 4:26-cv-00261-SEP (E.D. Mo. Apr. 27, 2026) · No. No. 4:26-cv-00261-SEP · Decided
April 27, 2026

SUMMARY

The Eastern District of Missouri denies DeAndre Walton’s application to proceed in forma pauperis under the three-strikes provision of 28 U.S.C. § 1915(g). The court finds that Walton has accrued three qualifying dismissals and has not alleged imminent danger of serious physical injury. The court orders him to pay the \$405 filing fee within 30 days or face dismissal without prejudice.

CASE DETAILS

COURT	United States District Court for the Eastern District of Missouri, Eastern Division
JURISDICTION	United States District Court for the Eastern District of Missouri, Eastern Division
DECIDED	April 27, 2026
DOCKET	No. 4:26-cv-00261-SEP
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff applied to proceed in the civil action without prepayment of fees and costs under 28 U.S.C. § 1915. The district court denied the application under the three-strikes provision and ordered Plaintiff to pay the filing fee or face dismissal without prejudice.
STANDARD OF REVIEW	The court applied the statutory eligibility requirements of 28 U.S.C. § 1915(g) to the allegations in the complaint and determined whether the imminent-danger exception applied.
PRECEDENTIAL VALUE	Unpublished memorandum and order; precedential status not identified in the opinion.
PARTIES	Deandre Walton v. Gregory N. Smith

TOPICS

- civil procedure
- civil rights
- prisoners rights
- section 1983

PRACTICE AREAS

civil procedure

prisoner civil rights

in forma pauperis proceedings

QUESTIONS PRESENTED

1. Whether Plaintiff was barred by 28 U.S.C. § 1915(g) from proceeding without prepayment of fees because he had accumulated three qualifying dismissals.
2. Whether the complaint satisfied § 1915(g)'s exception for a prisoner who is under imminent danger of serious physical injury.

HOLDINGS

1. A prisoner who has accumulated three prior actions dismissed as frivolous, malicious, or for failure to state a claim may not proceed in forma pauperis unless the complaint satisfies the imminent-danger exception. Because Walton had three qualifying strikes, he could not proceed without prepaying the filing fee absent that exception.
2. The complaint did not allege imminent danger of serious physical injury because its allegations concerned alleged attorney misconduct in a past criminal proceeding and did not identify a continuing or future risk of physical injury.

KEY QUOTATIONS

“In no event shall a prisoner bring a civil action . . . under this section if the prisoner has, on three or more prior occasions, while incarcerated or detained in any facility, brought an action . . . 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.” (at 1)

“The “imminent danger” exception to § 1915(g) “focuses on the risk that the conduct complained of threatens continuing or future injury, not on whether the inmate deserves a remedy for past misconduct.”” (at 2)

FACTUAL BACKGROUND

Walton, a prisoner and frequent filer, sued his former criminal defense attorney under 42 U.S.C. § 1983 based on alleged professional misconduct and conflicts of interest during representation in a 2024 criminal case. He sought punitive damages and compensatory damages. The court identified three prior actions dismissed as frivolous, malicious, or for failure to state a claim, and found that the present allegations did not indicate an imminent danger of serious physical injury.

PROCEDURAL HISTORY

Walton filed a § 1983 complaint against his criminal defense attorney and submitted an application to proceed in forma pauperis. The court found that Walton had accumulated three qualifying strikes under 28 U.S.C. § 1915(g) and that he had not alleged facts showing imminent danger of serious physical injury. The court denied the fee-waiver application, ordered payment of the \$405 filing fee within 30 days, and stated that failure to pay would result in dismissal without prejudice.

DISPOSITION

other

CASES CITED

- Higgins v. Carpenter, 258 F.3d 797, 799 (8th Cir. 2001)
- Martin v. Shelton, 319 F.3d 1048, 1050 (8th Cir. 2003)
- McAlphin v. Toney, 281 F.3d 709, 711 (8th Cir. 2002)
- Walton v. City of St. Louis Just. Ctr., et al., No. 4:24-cv-299-RHH (E.D. Mo. filed Mar. 7, 2025)
- Walton v. State of Missouri, et al., No. 4:24-cv-396-ACL (E.D. Mo. filed June 6, 2024)
- Walton v. Keen, No. 4:24-cv-537-NCC (E.D. Mo. filed June 12, 2024)

OPINION

Walton

PER CURIAM.

EASTERN DISTRICT OF MISSOURI

EASTERN DIVISION

DEANDRE WALTON,)

) Plaintiff,) v.) No. 4:26-cv-00261-SEP)

GREGORY N. SMITH,)

) Defendant.)

MEMORANDUM AND ORDER

Before the Court is self-represented Plaintiff DeAndre Walton’s application to proceed in district court without prepayment of fees and costs, Doc. [6]. Because Plaintiff has accrued three strikes under 28 U.S.C. § 1915(g), the Court denies the application. Plaintiff must pay the full filing fee to maintain this action. 28 U.S.C. § 1915(g) Plaintiff, a prisoner and frequent filer of lawsuits, is subject to 28 U.S.C. § 1915(g), which provides in relevant part: In no event shall a prisoner bring a civil action . . . under this section if the prisoner has, on three or more prior occasions, while incarcerated or detained in any facility, brought an action . . . 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. Commonly known as the “three strikes” rule, § 1915(g) has withstood multiple constitutional challenges. See Higgins v. Carpenter, 258 F.3d 797, 799 (8th Cir. 2001). Three civil actions brought by Plaintiff have been dismissed as frivolous or malicious, or for failure to state a claim. See e.g., Walton v. City of St. Louis Just. Ctr., et al., No. 4:24-cv- 299-RHH (E.D. Mo. filed Mar. 7, 2025); Walton v. State of Missouri, et al., No. 4:24-cv-396- ACL (E.D. Mo. filed June 6, 2024); Walton v. Keen, No. 4:24-cv-537-NCC (E.D. Mo. filed June 12, 2024). Therefore, the Court cannot permit Plaintiff to proceed in forma pauperis absent “imminent danger of serious physical

injury.” 28 U.S.C. § 1915(g).

THE COMPLAINT

Plaintiff brings this action under 42 U.S.C. § 1983 against his criminal defense attorney, Gregory N. Smith, arising out of his representation of Plaintiff in the Circuit Court for the City of St. Louis. See Doc. [1]. Plaintiff alleges Defendant violated his professional duty and engaged in misconduct and conflicts of interest during his representation. /d. Plaintiff seeks punitive damages of \$154,000 and compensatory damages of \$800 per day for the days he alleges Defendant was ineffective. /d. at 11.

DISCUSSION

Plaintiff has not alleged imminent danger of serious physical injury. The “imminent danger” exception to § 1915(g) “focuses on the risk that the conduct complained of threatens continuing or future injury, not on whether the inmate deserves a remedy for past misconduct.” *Martin v. Shelton*, 319 F.3d 1048, 1050 (8th Cir. 2003); see, e.g., *McAlphin v. Toney*, 281 F.3d 709, 711 (8th Cir. 2002) (plaintiff faced imminent danger where infection spreading in his mouth required five tooth extractions and he needed two more extractions that were being unconstitutionally delayed). Here, Plaintiff alleges his attorney engaged in misconduct in a criminal action prosecuted in 2024. None of the allegations suggests that Plaintiff is in “imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). Because the Complaint does not fall within the exception to § 1915(g), the Court will deny the application to proceed in district court without prepayment of fees and costs. Unless Plaintiff pays the \$405 filing fee within 30 days of the date of this Order, this action will be dismissed without prejudice pursuant to 28 U.S.C. § 1915(g). Accordingly, IT IS HEREBY ORDERED that Plaintiff's application to proceed in district court without prepaying fees and costs, Doc. [6], is DENIED. IT IS FURTHER ORDERED that Plaintiff shall pay the \$405 statutory filing fee within 30 days of the date of this Memorandum and Order. IT IS FURTHER ORDERED that, if Plaintiff does not comply with this Memorandum and Order, the Court will dismiss this action without prejudice and without further notice. Dated this 27th day of April, 2026.

UNITED STATES DISTRICT JUDGE

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