

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Schowachert v. Polley

Schowachert · No. 1:25-cv-0121 JLT BAM (PC) · Decided March 4, 2025

SUMMARY

The United States District Court for the Eastern District of California adopted findings and recommendations concerning John Paul Frank Schowachert’s application to proceed in forma pauperis. Because Plaintiff had accumulated six qualifying strikes under 28 U.S.C. § 1915(g) and did not allege imminent danger of serious physical injury, the court denied in forma pauperis status and ordered 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 California
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	March 4, 2025
DOCKET	1:25-cv-0121 JLT BAM (PC)
DISPOSITION	other
PROCEDURAL POSTURE	The district court reviewed a magistrate judge's findings and recommendations concerning Plaintiff's application to proceed in forma pauperis. Plaintiff filed no objections.
STANDARD OF REVIEW	De novo review under 28 U.S.C. § 636(b)(1).
PRECEDENTIAL VALUE	Likely nonprecedential district-court order

TOPICS

- prisoners rights
- civil rights
- civil procedure

PRACTICE AREAS

- civil procedure
- prisoner civil rights
- in forma pauperis proceedings

QUESTIONS PRESENTED

- Whether Plaintiff qualified for the imminent-danger exception to the three-strikes limitation in 28 U.S.C. § 1915(g).

2. Whether Plaintiff's application to proceed in forma pauperis should be denied and Plaintiff required to pay the filing fee.

HOLDINGS

1. The imminent-danger exception did not apply because Plaintiff failed to allege that he was in imminent danger of serious physical injury when the complaint was filed.
2. Plaintiff's application to proceed in forma pauperis was denied, and he was ordered to pay the full \$405 filing fee within 30 days if he wished to proceed with the action.

KEY QUOTATIONS

“failed to allege that he was in any imminent danger of serious physical injury at the time the complaint was filed.” (at 2)

“Within 30 days from the date of service of this order, Plaintiff SHALL pay in full the \$405.00 filing fee if he wishes to proceed with his action.” (at 3-4)

FACTUAL BACKGROUND

John Paul Frank Schowachert alleged that Bill Polley, identified as the Tuolumne County Jail Commander, violated his civil rights at the jail. In reviewing Schowachert's litigation history, the magistrate judge identified six prior actions qualifying as strikes under the Prison Litigation Reform Act. The complaint did not allege that Schowachert faced imminent danger of serious physical injury when the action was filed.

PROCEDURAL HISTORY

Plaintiff filed a civil-rights action concerning conditions at the Tuolumne County Jail and sought leave to proceed in forma pauperis. The magistrate judge found that Plaintiff had six qualifying strikes under 28 U.S.C. § 1915(g) and had not alleged imminent danger of serious physical injury, and recommended denial of in forma pauperis status. After the objection period expired without objections, the district court conducted de novo review, adopted the findings and recommendations, denied in forma pauperis status, and ordered Plaintiff to pay the \$405 filing fee within 30 days.

DISPOSITION

other

CASES CITED

- Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014)

OPINION

(PC) Schowachert v. Polley

PER CURIAM.

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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10

11 JOHN PAUL FRANK SCHOWACHERT, Case No. 1:25-cv-0121 JLT BAM (PC)

12 Plaintiff, ORDER ADOPTING FINDINGS AND

RECOMMENDATIONS, DENYING

13 v. PLAINTIFF'S APPLICATION TO PROCEED

IN FORMA PAUPERIS, AND DIRECTING

14 BILL POLLEY, PLAINTIFF TO PAY THE FILING FEE

WITHIN 30 DAYS

15 Defendant. (Docs. 2, 7) 16 17 John Paul Frank Schowachert seeks to proceed in forma pauperis
in this action, in which 18 he alleges the defendant—the Tuolumne County Jail Commander—
violated his civil rights at the 19 jail. (Docs. 1, 2.) Reviewing Plaintiff's litigation history, the
magistrate judge identified six 20 actions that qualified as strikes under 28 U.S.C. § 1915(g). (Doc.
7 at 1-2, n.1.) In addition, the 21 magistrate judge found Plaintiff "failed to allege that he was in
any imminent danger of serious 22 physical injury at the time the complaint was filed." (Id. at 2.)
Therefore, the magistrate judge 23 found the imminent danger exception to Section 1915 does not
apply and recommended that the 24 Court deny the motion to proceed in forma pauperis. (Id. at 2-
3.) 25 The Court served the Findings and Recommendations on Plaintiff and notified him that 26
any objections were due within 14 days. (Doc. 7 at 3.) The Court advised Plaintiff the "failure to
27 file objections within the specified time may result in the waiver of the 'right to challenge the
28 magistrate's factual findings' on appeal." (Id., quoting Wilkerson v. Wheeler, 772 F.3d 834,
838– 1 | 39 (th Cir. 2014).) Plaintiff did not file any objections and the time to do so has passed. 2
According to 28 U.S.C. § 636(b)(1), this Court performed a de novo review of this case. 3 |
Having carefully reviewed the matter, the Court concludes the Findings and Recommendations 4 |
are supported by the record and proper analysis. Thus, the Court ORDERS: 5 1. The Findings and
Recommendations filed on February 5, 2025 (Doc. 7) are 6 ADOPTED in full. 7 2. Plaintiff's
motion to proceed in forma paupers (Doc. 2) is DENIED. 8 3. Within 30 days from the date of
service of this order, Plaintiff SHALL pay in full 9 the \$405.00 filing fee if he wishes to proceed
with his action. 10 Plaintiff is advised that failure to pay the required filing fee as ordered will
result in 11 the dismissal of this action without prejudice. 12 B IT IS SO ORDERED. 4 Dated: _
March 4, 2025 Cerin | Tower

TED STATES DISTRICT JUDGE

15 16 17 18 19 20 21 22 23 24 25 26 27 28