

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

McElroy v. Department of Corrections

No. 25-cv-00314-HSG (N.D. Cal. Mar. 3, 2025) · No. 25-cv-00314-HSG · Decided March 3, 2025

SUMMARY

The United States District Court for the Northern District of California orders Plaintiff Latwahn J. McElroy to show cause why his request to proceed in forma pauperis should not be denied under the Prison Litigation Reform Act’s three-strikes provision, 28 U.S.C. § 1915(g). The court finds that Plaintiff has at least three qualifying prior strikes and that the complaint does not plausibly allege imminent danger of serious physical injury at the time of filing. The court also denies Plaintiff’s requests for an order to show cause, judicial notice, and temporary or preliminary injunctive relief as premature or unclear.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Haywood S. Gilliam, Jr.
JURISDICTION	United States District Court for the Northern District of California
DECIDED	March 3, 2025
DOCKET	25-cv-00314-HSG
DISPOSITION	other
PROCEDURAL POSTURE	Pro se prisoner civil-rights action under 42 U.S.C. § 1983. Before screening the complaint, the court considered Plaintiff’s request to proceed in forma pauperis under 28 U.S.C. § 1915(g) and requests for an order to show cause, judicial notice, and temporary or preliminary injunctive relief.
STANDARD OF REVIEW	The court evaluated whether the complaint plausibly alleged imminent danger of serious physical injury at the time of filing under 28 U.S.C. § 1915(g), and whether the requested injunctive relief had a sufficient nexus to claims pleaded in the complaint.
PRECEDENTIAL VALUE	Unknown; district-court order addressing IFP status and preliminary relief.
PARTIES	Latwahn J. McElroy v. Department of Corrections, et al.

TOPICS

civil procedure

prisoners rights

civil rights

injunctions

motions to dismiss

PRACTICE AREAS

civil procedure

prisoner civil rights

constitutional law

remedies

QUESTIONS PRESENTED

1. Whether Plaintiff should be denied leave to proceed in forma pauperis under 28 U.S.C. § 1915(g) based on at least three qualifying prior dismissals and the absence of a plausible imminent-danger allegation.
2. Whether the court could deny Plaintiff's requests for judicial notice and temporary or preliminary injunctive relief before determining whether the action could proceed and whether the complaint stated cognizable claims.

HOLDINGS

1. A district court may raise the potential applicability of 28 U.S.C. § 1915(g) sua sponte, but must notify the prisoner of the prior dismissals relied upon and provide an opportunity to be heard before denying in forma pauperis status.
2. A prior case counts as a strike when, after evaluating the substance of the dismissal, the case was dismissed in its entirety as frivolous, malicious, or for failure to state a claim; dismissals solely based on a prior three-strikes finding do not constitute additional strikes.
3. The imminent-danger exception is assessed at the time the complaint is filed and requires a plausible allegation of imminent danger of serious physical injury with a nexus to the violations alleged in the complaint; Plaintiff's allegations did not satisfy that standard.
4. A request for temporary or preliminary injunctive relief must relate to claims pleaded in the complaint and may be denied as premature where the action has not yet been authorized to proceed and the complaint has not yet been screened.

KEY QUOTATIONS

"To be counted as a strike, a case must be dismissed in its entirety as frivolous, malicious or for failure to state a claim." (at 2)

"A dismissal under Section 1915(g) means that a prisoner cannot proceed with his action in forma pauperis under Section 1915(g). However, the prisoner may still pursue his claims if he pays the full filing fee at the outset of the action." (at 5)

"The plain language of the imminent danger clause in Section 1915(g) indicates that "imminent danger" is to be assessed at the time of filing of the complaint." (at 9)

"A plaintiff is only entitled to an injunction based on claims pled in the complaint." (at 11)

FACTUAL BACKGROUND

Plaintiff, an inmate at Pelican Bay State Prison, filed a pro se complaint alleging numerous unrelated conditions and incidents, including allegedly tainted or unavailable water, inadequate medical care, administrative segregation, lack of access to legal and religious materials, dietary issues, and an alleged slip and fall. He relied principally on alleged dehydration, lack of water, and a prior medical incident to assert imminent danger. The court found that the complaint did not plausibly connect those allegations to a defendant or establish serious physical danger existing when the complaint was filed on January 7, 2025.

PROCEDURAL HISTORY

Plaintiff filed the complaint on or about January 7, 2025, together with a request to proceed in forma pauperis. He later filed two substantially identical pleadings seeking an order to show cause, judicial notice, sanctions, preliminary judgment, and temporary or preliminary injunctive relief. The court ordered Plaintiff to show cause within twenty-eight days why IFP status should not be denied under the PLRA's three-strikes provision and denied the additional requests as premature, unclear, or unsupported.

DISPOSITION

other

CASES CITED

- Harris v. Harris, 935 F.3d 670, 673-76 (9th Cir. 2019)
- Andrews v. King, 398 F.3d 1113, 1119-21 (9th Cir. 2005)
- Harris v. Mangum, 863 F.3d 1133, 1143 (9th Cir. 2017)
- Knapp v. Hogan, 738 F.3d 1106, 1108-10 (9th Cir. 2013)
- McHenry v. Renne, 84 F.3d 1179-80 (9th Cir. 1996)
- Ray v. Lara, 31 F.4th 692, 695, 699 (9th Cir. 2022)
- El-Shaddai v. Zamora, 833 F.3d 1036, 1042 (9th Cir. 2016)
- Andrews v. Cervantes, 493 F.3d 1047, 1053-55 (9th Cir. 2007)
- Pacific Radiation Oncology, LLC v. Queen's Med. Ctr., 810 F.3d 631, 633, 636-38 (9th Cir. 2015)
- McElroy v. City of Inglewood, et al., C No. 2:02-cv-04301-MMM-MLG (C.D. Cal. Nov. 20, 2002)
- McElroy v. City of Inglewood, et al., C No. 2:03-cv-05034-UA-MLG (C.D. Cal. July 25, 2003)
- McElroy v. Gebbmedin, et al., C No. 1:08-cv-00124-LJO-GSA PC (E.D. Cal. Dec. 11, 2008)
- McElroy v. California Department of Corrections, C No. 2:08-cv-00733 HWG (E.D. Cal. June 3, 2009)
- McElroy v. Schultz, et al., C No. 1:08-cv-00179-OWW-MJS (E.D. Cal. Apr. 30, 2010)
- McElroy v. Institutional Head Ground, et al., C No. 1:13-cv-0483-MJS (E.D. Cal. Nov. 1, 2013)
- McElroy v. Gomez, et al., C No. 1:1-20-cv-00658-DAD-SAB (E.D. Cal. Dec. 10, 2020)