

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Ray v. Cates

Ray · No. 1:22-cv-01504-CDB (PC) · Decided March 9, 2023

SUMMARY

The document contains findings and recommendations in a prisoner civil-rights action under 42 U.S.C. § 1983. The magistrate judge recommends denying Edward Vincent Ray, Jr.’s motion to proceed in forma pauperis under the three-strikes provision of 28 U.S.C. § 1915(g), finding that he had previously accumulated at least three qualifying strikes and had not shown imminent danger of serious physical injury. The recommendation would require payment of the \$402 filing fee in full.

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 9, 2023
DOCKET	1:22-cv-01504-CDB (PC)
DISPOSITION	other
PROCEDURAL POSTURE	A state prisoner proceeding pro se filed a 42 U.S.C. § 1983 action and moved to proceed in forma pauperis. A magistrate judge issued findings and recommendations recommending denial of IFP status under the Prison Litigation Reform Act's three-strikes provision and requiring payment of the filing fee.
STANDARD OF REVIEW	For the § 1915(g) inquiry, the court examined the dismissing courts' actions and the reasons underlying the dismissals, liberally construed the pro se allegations, and determined whether the complaint plausibly alleged imminent danger of serious physical injury at the time of filing. The court also considered whether the alleged danger had a nexus to the claims asserted.
PRECEDENTIAL VALUE	nonprecedential

TOPICS

prisoners rights

section 1983

civil procedure

PRACTICE AREAS

prisoner civil rights

in forma pauperis

federal civil procedure

QUESTIONS PRESENTED

1. Whether Plaintiff had accumulated at least three qualifying strikes under 28 U.S.C. § 1915(g).
2. Whether Plaintiff plausibly alleged that he was under imminent danger of serious physical injury when he filed the action.
3. Whether Plaintiff's imminent-danger allegations had a sufficient nexus to the claims asserted in the complaint.
4. Whether Plaintiff's motion to proceed in forma pauperis should be denied and the full filing fee required.

HOLDINGS

1. Plaintiff had at least three prior qualifying strikes and was therefore barred from proceeding in forma pauperis under 28 U.S.C. § 1915(g), absent a showing of imminent danger of serious physical injury.
2. Plaintiff failed to plausibly allege that he faced imminent danger of serious physical injury at the time he filed the action.
3. Plaintiff did not establish the required nexus between the alleged imminent danger and the claims asserted.

KEY QUOTATIONS

“In no event shall a prisoner bring a civil action . . . under this section if the prisoner has, 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.” (at 1)

“Pursuant to § 1915(g), a prisoner with three strikes or more cannot proceed IFP.” (at 2)

“These assertions are speculative and do not support Plaintiff’s claim that the water at CCI is contaminated or that he is being poisoned.” (at 5)

“Even accepting Plaintiff’s allegations are true, the Court finds that Plaintiff has failed to demonstrate he was in imminent danger at the time he filed this action.” (at 6)

FACTUAL BACKGROUND

Edward Vincent Ray, Jr., a state prisoner, alleged that contaminated water at California Correctional Institution exposed him to lead or coliform bacteria and that the integration of general-population and sensitive-needs-yard inmates placed him at risk of violence. He alleged past assaults, threats, extortion, and property theft but did not identify when the attacks occurred, establish that they were committed by known general-population inmates because he was a sensitive-needs-yard inmate, or explain how they resulted from the integration policy. The court also found that the water-contamination allegations were speculative and conclusory.

PROCEDURAL HISTORY

Plaintiff filed the complaint and IFP motion on November 21, 2022. While the action was pending, he re-filed photocopies of the pleadings in another action. The court reviewed Plaintiff's litigation history and complaint, found at least three qualifying strikes, and concluded that Plaintiff had not shown imminent danger of serious physical injury when he filed the action. The findings and recommendations were submitted to an assigned district judge, with fourteen days allowed for objections.

DISPOSITION

other

CASES CITED

- Andrews v. King, 398 F.3d 1113, 1116 n.1 (9th Cir. 2005)
- Andrews v. Cervantes, 493 F.3d 1047, 1051-55 (9th Cir. 2007)
- Tierney v. Kupers, 128 F.3d 1310, 1312 (9th Cir. 1997)
- King, 398 F.3d at 1121
- Knapp v. Hogan, 738 F.3d 1106, 1109 (9th Cir. 2013)
- Martin v. Shelton, 319 F.3d 1048, 1050 (8th Cir. 2003)
- Herbaugh v. San Diego Sheriff's Dep't, 2018 WL 5024802, at *2 (S.D. Cal. Oct. 17, 2018)
- White v. Colorado, 157 F.3d 1226, 1231-32 (10th Cir. 1998)
- Lewis v. Sullivan, 279 F.3d 526, 531 (7th Cir. 2002)
- Blackman v. Mjening, No. 1:16-cv-01421-LJO-GSA (PC), 2016 WL 5815905, at *1 (E.D. Cal. Oct. 4, 2016)
- Stine v. Fed. Bureau of Prisons, No. 1:13-cv-1883-AWI-MJS, 2015 WL 5255377, at *3 (E.D. Cal. Sept. 9, 2015)
- Pettus v. Morgenthau, 554 F.3d 293, 298-99 (2d Cir. 2009)
- United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980)
- Campbell v. Vance, No. CIV S-05-1163 RRB, 2005 WL 3288400, at *1 (E.D. Cal. Nov. 30, 2005)
- Dupree v. Palmer, 284 F.3d 1234, 1236 (11th Cir. 2002)
- Ray v. Ribera, No. 1:19-cv-01561-AWI-SKO (PC), 2019 WL 5887193 (E.D. Cal. Nov. 12, 2019), adopted, 2019 WL 6840153 (E.D. Cal. Dec. 16, 2019)
- Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014)
- Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)