

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Jones v. M.C.R.P. Program, et al.

No. 3:25-cv-1082-CAB-VET (S.D. Cal. May 1, 2025) · No. 3:25-cv-1082-CAB-VET · Decided May 1, 2025

SUMMARY

The United States District Court for the Southern District of California denied Wayne Elijah Jones’s motion to proceed in forma pauperis under the Prison Litigation Reform Act’s three-strikes provision. The court found that Jones had accumulated at least four qualifying strikes, had not plausibly alleged imminent danger of serious physical injury, and dismissed the action without prejudice for failure to prepay the filing and administrative fees.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Cathy Ann Bencivengo
JURISDICTION	United States District Court for the Southern District of California
DECIDED	May 1, 2025
DOCKET	3:25-cv-1082-CAB-VET
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiff filed a pro se civil-rights action under 42 U.S.C. § 1983 and moved to proceed in forma pauperis. The court denied IFP status under the Prison Litigation Reform Act’s three-strikes provision and dismissed the action without prejudice for failure to prepay the filing and administrative fees.
STANDARD OF REVIEW	The court reviewed the complaint to determine whether it plausibly alleged that Plaintiff faced imminent danger of serious physical injury at the time of filing and examined prior dismissals to determine whether they counted as strikes under 28 U.S.C. § 1915(g).
PRECEDENTIAL VALUE	unpublished, nonprecedential district court order
PARTIES	Wayne Elijah Jones v. M.C.R.P. Program, et al.

TOPICS

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

PRACTICE AREAS

civil procedure

prisoner civil rights

QUESTIONS PRESENTED

1. Whether Plaintiff was barred from proceeding in forma pauperis under the PLRA three-strikes provision, 28 U.S.C. § 1915(g).
2. Whether Plaintiff established the statutory exception by plausibly alleging that he faced imminent danger of serious physical injury when he filed the complaint.
3. Whether the action should be dismissed without prejudice for failure to prepay the required filing and administrative fees.

HOLDINGS

1. A prisoner who has accumulated three or more qualifying strikes may not proceed in forma pauperis unless the complaint satisfies the imminent-danger exception. The court found that Jones had accumulated at least four qualifying strikes.
2. Plaintiff did not satisfy the imminent-danger exception because the complaint contained no plausible allegation that he faced imminent danger of serious physical injury at the time of filing.
3. The action was dismissed without prejudice because Plaintiff was denied IFP status and failed to prepay the \$405 civil and administrative filing fees.

KEY QUOTATIONS

“The Court DENIES the motion to proceed IFP pursuant to 28 U.S.C. § 1915(g), [Doc. No. 2], and DISMISSES this civil action sua sponte without prejudice for failing to prepay the \$405 civil and administrative filing fees required by 28 U.S.C. § 1914(a).” (at 3)

“The Court CERTIFIES that an IFP appeal from this order would not be taken in good faith pursuant to 28 U.S.C. §1915(a)(3) and DIRECTS the Clerk of the Court to close the file.” (at 3)

FACTUAL BACKGROUND

Jones, an incarcerated person at R.J. Donovan Correctional Facility, filed a § 1983 action seeking money damages for alleged retaliatory and defamatory conduct. He did not prepay the required \$405 in civil and administrative filing fees and instead moved to proceed in forma pauperis. The court found that he had at least four prior qualifying dismissals while incarcerated and that his complaint did not plausibly allege imminent danger of serious physical injury.

PROCEDURAL HISTORY

On April 25, 2025, Jones filed a § 1983 civil-rights complaint without prepaying the filing fee and submitted an IFP motion. The court reviewed its own dockets, determined that Jones had accumulated at least four qualifying strikes under 28 U.S.C. § 1915(g), and found no plausible allegation of imminent danger of serious physical

injury. The court denied the IFP motion, dismissed the action without prejudice, certified that an IFP appeal would not be taken in good faith, and directed the clerk to close the file.

DISPOSITION

dismissed

CASES CITED

- Andrews v. Cervantes, 493 F.3d 1047, 1051, 1055 (9th Cir. 2007)
- Rodriguez v. Cook, 169 F.3d 1176, 1177, 1180 (9th Cir. 1999)
- Andrews v. King, 398 F.3d 1113, 1116 n.1, 1120 (9th Cir. 2005)
- O’Neal v. Price, 531 F.3d 1146, 1153 (9th Cir. 2008)
- El-Shaddai v. Zamora, 833 F.3d 1036, 1042 (9th Cir. 2016)
- Bias v. Moynihan, 508 F.3d 1212, 1225 (9th Cir. 2007)
- Franklin v. Murphy, 745 F.2d 1221, 1231 (9th Cir. 1984)
- Jones v. Peng, et al., No. 21-cv-1912-MMA-BLM (S.D. Cal. May 12, 2022)
- Jones v. Peng, et al., No. 22-55543 (9th Cir. Nov. 17, 2022)
- Jones v. Cal. Gov’t Claims Program, et al., No. 23-cv-1256-WQH-DDL (S.D. Cal. Aug. 21, 2023)
- Jones v. Wasco State Prison, No. 23-cv-0543-JLT-BAM (E.D. Cal. Sept. 15, 2023)

OPINION

Jones v. M.C.R.P. Program

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 WAYNE ELIJAH JONES, Case No.: 3:25-cv-1082-CAB-VET

CDCR #BU-7712,

12 ORDER: Plaintiff, 13

v. (1) DENYING MOTION TO

14 PROCEED IN FORMA PAUPERIS; M.C.R.P. PROGRAM, et al.,

15 and Defendants. 16

(2) DISMISSING COMPLAINT

17 18 On April 25, 2025, Plaintiff Wayne Elijah Jones, currently incarcerated at R.J. 19 Donovan Correctional Facility (“RJD”) and proceeding pro se, filed a civil rights action 20 pursuant 42 U.S.C. § 1983. [Doc. No. 1.] Plaintiff did not prepay the civil filing fee 21 required by 28 U.S.C. § 1914(a) at the time of filing. He has instead filed a motion to 22 proceed in forma pauperis (“IFP”) pursuant to 28 U.S.C. §1915(a). [Doc. No. 2.] 23

I. IFP MOTION

24 All parties instituting any civil action, suit or proceeding in a district court of the 25 United States, except an application for writ of habeas corpus, must pay a filing fee of 26 \$350, and those not granted leave to proceed IFP must pay an additional administrative fee 27 of \$55. See 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court 28 1 Misc. Fee Schedule, § 14 (eff. Dec. 1, 2023)). The action may proceed despite Plaintiff's 2 failure to prepay the entire fee only if he is granted leave to proceed IFP. See *Andrews v. 3 Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); see also *Rodriguez v. Cook*, 169 F.3d 4 1176, 1177 (9th Cir. 1999). 5 a. "Three Strikes" Provision 6 For prisoners like Plaintiff, however, the Prison Litigation Reform Act ("PLRA") 7 amended 28 U.S.C. § 1915 to preclude the privilege to proceed IFP: 8 . . . 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 9 States that was dismissed on the grounds that it is frivolous, malicious, or fails 10 to state a claim upon which relief can be granted, unless the prisoner is under imminent danger of serious physical injury. 11 12 28 U.S.C. § 1915(g). "This subdivision is commonly known as the 'three strikes' 13 provision." *Andrews v. King*, 398 F.3d 1113, 1116 n.1 (9th Cir. 2005). 14 Once a prisoner has accumulated three strikes, he is prohibited by § 1915(g) from 15 pursuing any other IFP action in federal court unless he can show he is facing imminent 16 danger of serious physical injury. See 28 U.S.C. § 1915(g); *Cervantes*, 493 F.3d at 1055 17 (noting § 1915(g)'s exception for IFP complaints which "make[] a plausible allegation that 18 the prisoner faced 'imminent danger of serious physical injury' at the time of filing.") 19 "Strikes are prior cases or appeals, brought while the plaintiff was a prisoner, which were 20 dismissed on the ground that [they were] frivolous, malicious, or fail[ed] to state a claim," 21 *Andrews*, 398 F.3d at 1116 n.1, "even if the district court styles such dismissal as a denial 22 of the prisoner's application to file the action without prepayment of the full filing fee." 23 *O'Neal v. Price*, 531 F.3d 1146, 1153 (9th Cir. 2008). When courts "review a dismissal to 24 determine whether it counts as a strike, the style of the dismissal or the procedural posture 25 is immaterial. Instead, the central question is whether the dismissal rang the PLRA bells 26 of frivolous, malicious, or failure to state a claim." *El-Shaddai v. Zamora*, 833 F.3d 1036, 27 1042 (9th Cir. 2016) (internal quotation marks and citation omitted). 28 1 While defendants typically carry the initial burden to produce evidence 2 demonstrating a prisoner is not entitled to proceed IFP, "[i]n some instances, the district 3 court docket may be sufficient to show that a prior dismissal satisfies at least one of the 4 criteria under § 1915(g) and therefore counts as a strike." *Andrews*, 398 F.3d at 1120. That 5 is the case here. 6 b. Prior Strikes 7 A court "may take notice of proceedings in other courts, both within and without the 8 federal judicial system, if those proceedings have a direct relation to matters at issue." *Bias 9 v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (internal quotation marks omitted). 10 Based on a review of its own dockets, the Court finds that Plaintiff, currently identified as 11 California Department of Corrections and Rehabilitation ("CDCR") Inmate #BU-7712, 12 while incarcerated, has had at least four prior civil actions dismissed on the grounds that

13 they were frivolous, malicious, or failed to state a claim upon which relief may be granted. 14 They are: 15 (1) Jones v. Peng, et al., No. 21-cv-1912-MMA-BLM (S.D. Cal. May 12, 2022) 16 (Order Granting Motion to Proceed IFP, Dismissing Complaint with leave to amend for 17 failure to state a claim pursuant to 28 U.S.C. §§ 1915(e)(2)(B) & 1915A(b) [Doc. No. 11]) 18 (May 12, 2022 Order dismissing action [Doc. No. 12]) (strike one); 19 (2) Jones v. Peng, et al., No. 22-55543 (9th Cir. Nov. 17, 2022) (Order Revoking 20 IFP and Dismissing Appeal as Frivolous [Dkt No. 24]) (strike two); 21 (3) Jones v. Cal. Gov't Claims Program, et al., No. 23-cv-1256-WQH-DDL (S.D. 22 Cal. Aug. 21, 2023) (Order Dismissing Case for failure to state a claim pursuant to 28 U.S.C. §1915A [Doc. No. 7]) (strike three); 24 (4) Jones v. Wasco State Prison, No. 23-cv-0543-JLT-BAM (E.D. Cal. Sept. 15, 25 2023) (Findings and Recommendation ("F&R") to Dismiss Civil Action for failure to state 26 a claim [Doc. No. 22]); (Order Adopting F&R and Dismissing Action [Doc. No. 23]) 27 (strike four). 28 Accordingly, Plaintiff has accumulated at least four strikes as defined by § 1915(g). 1 c. Imminent Danger of Serious Physical Injury 2 Once a prisoner has accumulated three strikes, section 1915(g) prohibits his pursuit 3 ||of any subsequent IFP civil action or appeal in federal court unless he faces "imminent 4 || danger of serious physical injury." See 28 U.S.C. § 1915(g); Cervantes, 493 F.3d at 1051- 5 ||52. The Court has reviewed Plaintiff's complaint and concludes it contains no "plausible 6 || allegations" to suggest Plaintiff faced "imminent danger of serious physical injury at the 7 || time of filing." Cervantes, 493 F.3d at 1055. Rather, Plaintiff seeks money damages for 8 ||retaliatory and defamatory actions. [Doc. No. 1 at 8, 10.] 9 Accordingly, because Plaintiff has, while incarcerated, accumulated at least three 10 "strikes" as defined by § 1915(g), and fails to make a plausible allegation that he faced 11 ||imminent danger of serious physical injury at the time he filed his complaint, he is not 12 entitled to the privilege of proceeding IFP in this action. See Rodriguez v. Cook, 169 F.3d 13 1176, 1180 (9th Cir. 1999) (finding that 28 U.S.C. § 1915(g) "does not prevent all prisoners 14 || from accessing the courts; it only precludes prisoners with a history of abusing the legal 15 ||system from continuing to abuse it while enjoying IFP status"); see also Franklin v. 16 || Murphy, 745 F.2d 1221, 1231 (9th Cir. 1984) (stating that "court permission to proceed 17 || [IFP] is itself a matter of privilege and not right").

18 II. CONCLUSION

19 The Court DENIES the motion to proceed IFP pursuant to 28 U.S.C. § 1915(g), 20 ||[Doc. No. 2], and DISMISSES this civil action sua sponte without prejudice for failing 21 || to prepay the \$405 civil and administrative filing fees required by 28 U.S.C. § 1914(a). 22 || The Court CERTIFIES that an IFP appeal from this order would not be taken in good 23 || faith pursuant to 28 U.S.C. §1915(a)(3) and DIRECTS the Clerk of the Court to close the 24 || file. 25 IT IS SO ORDERED. — GB 27 Dated: May 1, 2025 Hon. Cathy Ann Bencivengo 28 United States District Judge

