

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Scott v. California Department of Correction and Rehabilitation

Scott · No. 1:25-cv-00545-SKO · Decided May 12, 2025

SUMMARY

The court recommends denying Floyd Scott’s application to proceed in forma pauperis under the three-strikes provision of 28 U.S.C. § 1915(g). It concludes that Scott had incurred at least three qualifying prior strikes and had not shown that he faced an imminent danger of serious physical injury when he filed the action. The court also recommends that Scott be required to pay the \$405 filing fee in full within 30 days.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Sheila K. Oberto
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	May 12, 2025
DOCKET	1:25-cv-00545-SKO
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff filed a civil rights action under 42 U.S.C. § 1983 and applied to proceed in forma pauperis. The magistrate judge issued findings and recommendations that the application be denied under the Prison Litigation Reform Act's three-strikes provision and that Plaintiff be required to pay the filing fee.
STANDARD OF REVIEW	For the three-strikes inquiry, the court examines the dismissing court's action and the reasons underlying the dismissal rather than treating the procedural mechanism as dispositive. The imminent-danger exception is evaluated based on the conditions faced when the complaint was filed and requires a real, proximate, present threat rather than a speculative or hypothetical one.
PRECEDENTIAL VALUE	nonprecedential

TOPICS

- prisoners rights
- civil rights
- civil procedure
- damages
- remedies

PRACTICE AREAS

Civil procedure

Prisoner civil rights

In forma pauperis proceedings

Remedies

QUESTIONS PRESENTED

1. Whether Plaintiff had incurred at least three prior strikes under 28 U.S.C. § 1915(g).
2. Whether Plaintiff qualified for the imminent-danger exception to the three-strikes bar.
3. Whether Plaintiff's application to proceed in forma pauperis should be denied and Plaintiff required to pay the filing fee.

HOLDINGS

1. Plaintiff had at least three qualifying prior strikes because multiple prior actions were dismissed for failure to state a claim, and one appeal was dismissed as frivolous.
2. Plaintiff did not establish that he faced an imminent danger of serious physical injury when he filed the complaint.

KEY QUOTATIONS

“In determining whether a case counts as a “strike,” “the reviewing court looks to the dismissing court’s action and the reasons underlying it... This means that the procedural mechanism or Rule by which the dismissal is accomplished, while informative, is not dispositive.”” (at 2)

“The “imminent danger” exception is available “for genuine emergencies,” where “time is pressing” and “a threat ... is real and proximate.”” (at 3)

“In sum, Plaintiff fails to present a genuine emergency or threat that is real and proximate when he filed his complaint.” (at 6)

FACTUAL BACKGROUND

Plaintiff alleged that contaminated water at several California prisons caused or contributed to thyroid cancer, prostate-related problems, intestinal problems, and possible future cancer. He also alleged that removal from single-cell housing while using an external catheter created a risk of fights or disciplinary violations. His complaint sought monetary damages and single-cell housing, and he claimed that these conditions placed him in imminent danger of serious physical injury.

PROCEDURAL HISTORY

Plaintiff filed his complaint on May 8, 2025, and his application to proceed in forma pauperis on May 9, 2025. The magistrate judge took judicial notice of Plaintiff's prior actions and appeals, determined that at least three qualified as strikes under 28 U.S.C. § 1915(g), and concluded that Plaintiff had not shown imminent danger of serious physical injury. The court directed assignment of a district judge and recommended denial of IFP status and payment of the \$405 filing fee within 30 days.

DISPOSITION

CASES CITED

- Knapp v. Hogan, 738 F.3d 1106, 1109 (9th Cir. 2013)
- Moore v. Maricopa County Sheriff's Office, 657 F.3d 890, 893-94 (9th Cir. 2011)
- United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980)
- Andrews v. Cervantes, 493 F.3d 1047, 1052-53 (9th Cir. 2007)
- Lewis v. Sullivan, 279 F.3d 526, 531 (7th Cir. 2002)
- Clarke v. DeKalb County Sterigenics Plant Board of Directors and Board of Commissioners, No. 1:22-cv-4445-SCJ-JKL, 2023 WL 11915613, at *1 (N.D. Ga. Feb. 6, 2023)
- Blackman v. Mjening, No. 1:16-01421-LJO-GSA-PC, 2016 WL 5815905, at *1 (E.D. Cal. Oct. 4, 2016)
- Sykes v. Trost, No. 16-cv-01241-SMY, 2017 WL 76969, at *3 (S.D. Ill. Jan. 9, 2017)
- Ray v. Sullivan, No. 1:20-cv-01699-NONE-HBK, 2021 WL 2229328, at *4 (E.D. Cal. June 2, 2021)
- Cramer v. Jones, No. 1:19-cv-000161-DAD-SKO, 2020 WL 402018, at *3 (E.D. Cal. Jan. 24, 2020)
- Pauline v. Mishner, No. 09-00182 JMS/KSC, 2009 WL 1505672, at *3 (D. Haw. May 28, 2009)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 11 FLOYD SCOTT, Case No.: 1:25-cv-00545-SKO 12 Plaintiff, FINDINGS
AND RECOMMENDATIONS TO DENY PLAINTIFF'S APPLICATION TO 13 v. PROCEED
IN FORMA PAUPERIS 14 CALIFORNIA DEPARTMENT OF (Doc. 2) CORRECTION AND 15
REHABILITATION, et al., 14-DAY OBJECTION PERIOD 16 Defendants. Clerk of the Court to
Assign District Judge 17 18 19 Plaintiff Floyd Scott is appearing pro se in this civil rights action
pursuant to 42 U.S.C. 20 section 1983.

21 I. INTRODUCTION 22 On May 8, 2025, Plaintiff filed his complaint; the following day he
filed an application to 23 proceed in forma pauperis (IFP). (Docs. 1 & 2.) 24 II. THREE STRIKES
PROVISION OF 28 U.S.C. § 1915 25 28 U.S.C. section 1915 governs IFP proceedings.

The statute provides that “[i]n no event 26 shall a prisoner bring a civil action... under this section
if the prisoner has, on 3 or more prior 27 occasions, while incarcerated or detained in any facility,
brought an action or appeal in a court of 1 a claim upon which relief may be granted, unless the
prisoner is under imminent danger of serious 2 physical injury.” 28 U.S.C. § 1915(g).

3 In determining whether a case counts as a “strike,” “the reviewing court looks to the 4
dismissing court’s action and the reasons underlying it.... This means that the procedural 5
mechanism or Rule by which the dismissal is accomplished, while informative, is not 6
dispositive.” Knapp v. Hogan, 738 F.3d 1106, 1109 (9th Cir. 2013) (citation omitted). 7 III.

JUDICIAL NOTICE 8 The Court takes judicial notice¹ of several prior lawsuits filed by Plaintiff in California 9 district courts and the Ninth Circuit Court of Appeals: 10 1. Scott v. Lewis, No. 3:94-cv-04355-EFL (N.D. Cal.) (dismissed for failure to state a claim 11 on January 27, 1995) 12 2. Scott v. Bradley, No. 3:96-cv-01189-EFL (N.D. Cal.) (dismissed for failure to state a 13 claim on April 15, 1996) 14 3.

Scott v. De La Cruz, No. 2:13-cv-02928-UA-AJW (C.D. Cal.) (dismissed for failure to 15 state a claim on May 17, 2013) 16 4. Scott v. Acosta, No. 2:16-cv-08000-JVS-AJW (C.D. Cal.) (dismissed for failure to state a 17 claim on December 16, 2016) 18 5. Scott v. Cody, No. 19-55631 (9th Cir.) (dismissed as frivolous on September 16, 2019) 19 6. Scott v. Adventist Health Bakersfield, No. 1:22-cv-01334-KES-CDB (E.D.

Cal.) 20 (dismissed for failure to state a claim on October 22, 2024) 21 A dismissal for a failure to state a claim is a strike for purposes of 28 U.S.C. § 1915(g). 22 Moore v. Maricopa Cnty. Sheriff's Office, 657 F.3d 890, 893-94 (9th Cir. 2011).

Because Plaintiff 23 has incurred at least three prior "strikes," and each was dismissed prior to the commencement of 24 the current action on May 8, 2025, Plaintiff is subject to the section 1915(g) bar. Plaintiff is also 25 precluded from proceeding IFP in this action unless, at the time he filed his complaint, he was 26 27 1 The Court may take judicial notice of court records.

United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980). 1 under imminent danger of serious physical injury. See Andrews v. Cervantes, 493 F.3d 1047, 2 1052-53 (9th Cir. 2007). 3 IV. IMMINENT DANGER DISCUSSION 4 Plaintiff's Allegations 5 The Court has conducted a review of Plaintiff's pending complaint. Plaintiff names the 6 California Department of Corrections and Rehabilitation (CDCR), as well as several officials, 7 including directors and/or secretaries and wardens, of Kern Valley State Prison (KVSP), Salinas 8 Valley State Prison (SVSP), and California State Prison-Lancaster (CSP-LAC).

He alleges 9 Eighth Amendment deliberate indifference to health and safety claims, claiming the named 10 defendants failed "to fix or repair their contaminated water supply," causing Plaintiff "serious 11 medical problems" and placing him in imminent danger. He seeks "Ten Million Dollars from 12 each named Defendant at KVSP" for "not Repairing their Contaminated Water Supply" and "Five 13 Million Dollars each" from "the CDCR and the named Defendants" for "failing to Control the 14 Water Systems Located on California State Prison Property." Plaintiff also seeks an order 15 permitting him permanent single cell status.

16 Plaintiff alleges that in 2012 he began suffering from "a knot on his neck," choking, and 17 difficulty swallowing food. Several biopsies and scans were performed over a period of years. In 18 2023, Plaintiff was diagnosed with thyroid cancer resulting in surgical removal of his thyroid

19 gland. At that time, Plaintiff was housed at KVSP and learned the water supply at the institution
20 was contaminated by arsenic and other cancer-causing agents.

Plaintiff asserts excessive arsenic 21 consumption causes thyroid cancer. He states he takes and
will continue to take a daily 22 medication following the removal of his thyroid gland. Apparently
during this same period, 23 Plaintiff developed an enlarged prostate and underwent two surgical
procedures for “uncontrolled 24 urination flow.” Plaintiff alleges he “is continuously monitored
for Prostate Cancer” and “has 25 seen at least four different” urologists.

26 In 2017, while housed at SVSP, Plaintiff developed intestinal problems, including chronic 27
diarrhea. He was hospitalized for intestinal bleeding and underwent a colonoscopy. While housed
1 emergency endoscopy and colonoscopy. Plaintiff alleges he is continuously monitored for colon
2 cancer. Plaintiff contends the water at SVSP was contaminated by rodent fecal matter and 3
contains “Per-And Polyfloroalkyl Substances (PFAS) known as FOREVER Chemicals which 4
never goes away once inside your body.” Plaintiff contends the water at CSP-LAC contains 5
excessive calcium, building up as a solid that he was forced to consume.

6 Plaintiff further alleges that has wears a urinary leg bag with extension tubing and a male 7
external catheter which requires him to ““Pump up his Phallus.”” He contends this presents an 8
imminent danger because “others will look at it as something else to reach pleasure which can 9
lead to fights or Rules Violation Reports from staff.” Plaintiff also asserts that on December 31, 10
2024, he was removed from single cell status “so that it would be easier to transfer [him] to a 11
Level Two Prison in total disregard” of his safety because there “could be fights” and he is a 67-
12 year-old man with serious medical issues “who can not properly defend” himself.

13 Plaintiff contends he “still has Thyroid Cancer” and continues to urinate and defecate 14
excessively because of the contaminated water at KVSP, SVSP, and CSP-LAC. 15 Analysis 16
The availability of the imminent danger exception turns on the conditions a prisoner faced 17
when the complaint was filed, not at some earlier or later time. See *Andrews*, 493 F.3d at 1053.

18 The “imminent danger” exception is available “for genuine emergencies,” where “time is 19
pressing” and “a threat... is real and proximate.” *Lewis v. Sullivan*, 279 F.3d 526, 531 (7th Cir. 20
2002). Here, Plaintiff’s allegations do not meet the imminent danger exception. 21 First, the status
of Plaintiff’s thyroid cancer is unclear. His complaint states his thyroid 22 gland was removed2 in
20233 and that he takes thyroid hormone replacement pills.

Plaintiff does 23 not allege that following removal of his thyroid gland the cancer spread to other
his tissues, 24 2 “Surgery is the most common treatment for thyroid cancer.” A total thyroidectomy
involves “[r]emoval 25 of all but a very small part of the thyroid. Lymph nodes near the cancer
may also be removed and checked under a microscope for signs of cancer.” See

<https://www.cancer.gov/types/thyroid/patient/thyroid-treatment-pdq>, last accessed May 12, 2025.

Plaintiff contends: “Dr. Driskoll in San Diego, California, [performed] the removal of the Plaintiff’s right side Thyroid which turned out to be full of Cancer so the Plaintiff had to have the left side Thyroid removed also which also had cancer in it.” (Doc. 1 at 8.) Plaintiff alleges that the thyroid cancer spread to other parts of his body.⁴ Nor does Plaintiff allege he underwent radiation therapy that would kill any cancer cells that were not removed following surgery.⁵ Thus, it appears the 2023 total thyroidectomy successfully treated Plaintiff’s thyroid cancer,⁶ and although he will likely be monitored for any recurrence, there has been no such recurrence.

Therefore, Plaintiff alleges a past harm rather than a present genuine emergency where the threat was real and proximate at the time he filed his complaint. *Andrews*, 749 F.3d at 1053; *Lewis*, 279 F.3d at 531; see also *Clarke v. DeKalb Cnty. Sterigenics Plant Bd. of Dir. and Bd. of Comm’n*, No. 1:22-cv-4445-SCJ-JKL, 2023 WL 11915613, at *1 (N.D. Geo. 9 Feb.

6, 2023) (where plaintiff alleged he contracted cancer in 2008 after being supplied with 10 carcinogenic toilet paper between 1990 and 2010, stating: “Plaintiff has not alleged any acts or 11 omissions by Defendant that place him presently in imminent danger of serious physical injury, or 12 otherwise alleged that he is facing a total withdrawal of medical care for his cancer (to the 13 contrary, Plaintiff alleges that his cancer requires repeated, invasive treatments).

Indeed, Plaintiff’s claims for compensatory and punitive damages based on Defendant’s alleged failure to warn, by their nature, seek to remedy purported past harm. Consequently, Plaintiff has not shown imminent danger of serious physical injury, and this IFP action is barred under 28 U.S.C. § 1915(g) [citations omitted]”) Second, to the extent Plaintiff alleges he is being continuously monitored for colon and prostate cancer, he fails to allege any diagnoses of these cancers.

Continuous monitoring does not equate to an imminent danger of serious physical injury. Rather, it demonstrates Plaintiff’s medical conditions are currently being treated and constantly reevaluated. While the Court understands Plaintiff fears diagnoses of colon and prostate cancer considering his medical history, See <https://www.cancer.gov/types/thyroid/patient/thyroid-treatment-pdq>, last accessed May 12, 2025.

See <https://www.cancer.gov/types/thyroid/patient/thyroid-treatment-pdq>, last accessed May 12, 2025. “[M]ost thyroid cancers are curable with treatment, especially if the cancer cell haven’t spread to distant parts of [the] body.” <https://my.clevelandclinic.org/health/diseases/12210-thyroid-cancer>, last accessed May 12, 2025. “Most people diagnosed with thyroid cancer have an excellent prognosis, as most thyroid cancers can be cured with treatment.”

<https://www.mayoclinic.org/diseases-conditions/thyroid-cancer/diagnosis-treatment/drc-20354167>, last accessed May 12, 2025.

1 Plaintiff's current fears equate to speculation rather than a demonstration of a present genuine 2 emergency where the threat is real and proximate. Lewis, 279 F.3d at 531; Blackman v. Mjening, 3 No. 1:16-01421-LJO-GSA-PC, 2016 WL 5815905, at *1 (E.D. Cal. Oct. 4, 2016) ("Imminent 4 danger of serious physical injury must be a real, present threat, not merely speculative or 5 hypothetical"); see also Sykes v. Trost, No. 16-cv-01241-SMY, 2017 WL 76969, at *3 (S.D.

Ill. 6 Jan. 9, 2017) (considering prisoner's chronic conditions, including "enlarged prostate, bloody 7 stool, difficulties urinating, etc." and noting "the chronic conditions are stable and, though 8 obviously aggravating to Plaintiff, present no imminent danger of serious physical injury" and 9 that "the Complaint suggests that Plaintiff has received regular, ongoing medical treatment for 10 these conditions").

11 Finally, Plaintiff's asserts that his use of a male external catheter requires him to "'Pump 12 up his Phallus,'" and could lead to fights or rules violation reports for inappropriate sexual 13 behavior because he is no longer in a single cell and has no privacy. These assertions relate to 14 speculative or hypothetical future harm and are insufficient to establish an imminent danger of 15 serious physical injury.

See, e.g., Ray v. Sullivan, No. 1:20-cv-01699-NONE-HBK, 2021 WL 16 2229328, at *4 (E.D. Cal. June 2, 2021) (imminent danger must involve a real, present threat, not 17 merely a speculative or hypothetical one); Cramer v. Jones, No. 1:19-cv-000161-DAD-SKO, 18 2020 WL 402018, at *3 (E.D. Cal. Jan. 24, 2020) (finding "Plaintiff's generalized fear of 19 potential harm to be suffered in the future due to his filing of this lawsuit is insufficient to satisfy 20 section 1915(g)'s 'imminence' requirement.

Plaintiff has also failed to allege a threat of imminent 21 serious physical injury beyond that which is merely speculative or hypothetical" [citation 22 omitted]; F&R adopted Mar. 30, 2020; appeal dismissed Dec. 16, 2020); Blackman, 2016 WL 23 5815905, at *1; Pauline v. Mishner, No. 09-00182 JMS/KSC, 2009 WL 1505672, at *3 (D. Haw. 24 May 28, 2009) ("Plaintiff's vague and conclusory allegations of possible future harm to himself or 25 others are insufficient to trigger the 'imminent danger of serious physical injury' exception to 26 dismissal under § 1915(g)").

27 // 1 In sum, Plaintiff fails to present a genuine emergency or threat that is real and proximate 2 when he filed his complaint. Therefore, Plaintiff should be precluded from proceeding IFP in this 3 action. Andrews, 493 F.3d at 1052-53; Lewis, 279 F.3d at 531. 4 V. ORDER AND RECOMMENDATION 5 Based on the foregoing, the Court DIRECTS the Clerk of the Court to randomly assign a 6 district judge to this action.

7 The Court RECOMMENDS that: 8 1. Plaintiff's application to proceed IFP (Doc. 2) be
DENIED and Plaintiff be precluded 9 from proceeding IFP in this action in accord with 28 U.S.C.
section 1915(g); and 10 2. Plaintiff be ordered to pay the \$405.00 filing fee in full within 30 days.
11 IT IS SO ORDERED. 12 13 Dated: May 12, 2025 /s/ Sheila K. Oberto. UNITED STATES
MAGISTRATE JUDGE 14 15 16 17 18 19 20 21 22 23 24 25 26 27