

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PRECEDENTIAL VALUE	nonprecedential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

other

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)

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