

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Dylan S. Corral v. Owens

Corral · No. 2:24-cv-0282 WBS AC P · Decided April 3, 2025

SUMMARY

The magistrate judge recommends dismissing without prejudice a prisoner’s 42 U.S.C. § 1983 action because the plaintiff was subject to the three-strikes bar under 28 U.S.C. § 1915(g), did not allege imminent danger, failed to elect whether to proceed or voluntarily dismiss, and did not pay the filing fee. The findings and recommendations advise that objections may be filed within fourteen days.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Allison Claire, United States Magistrate Judge
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	April 3, 2025
DOCKET	2:24-cv-0282 WBS AC P
DISPOSITION	remanded
PROCEDURAL POSTURE	Findings and recommendations by a magistrate judge recommending dismissal without prejudice of a prisoner's 42 U.S.C. § 1983 action after the prisoner failed to pay the filing fee or elect whether to proceed or voluntarily dismiss.
PRECEDENTIAL VALUE	Nonprecedential findings and recommendations
PARTIES	Dylan S. Corral v. Owens

TOPICS

- prisoners rights
- section 1983
- civil procedure

PRACTICE AREAS

- Prisoner civil rights
- Federal civil procedure
- In forma pauperis proceedings

QUESTIONS PRESENTED

1. Whether plaintiff was barred by 28 U.S.C. § 1915(g) from proceeding without prepayment of the filing fee because he had three strikes and did not show imminent danger of serious physical injury.
2. Whether the action should be dismissed without prejudice after plaintiff failed to pay the filing fee or respond to the court's election order.

HOLDINGS

1. A prisoner with three qualifying strikes may proceed without prepaying the filing fee only upon showing that he is under imminent danger of serious physical injury; plaintiff made no such showing and therefore was required to pay the filing fee.
2. Dismissal without prejudice was recommended because plaintiff did not pay the required filing fee, elect whether to proceed or voluntarily dismiss, or otherwise respond to the court's order.

KEY QUOTATIONS

“Accordingly, *IT IS HEREBY RECOMMENDED* that this action be dismissed without prejudice.” (6-7)

FACTUAL BACKGROUND

Dylan S. Corral, a state prisoner proceeding without counsel, brought an action under 42 U.S.C. § 1983. He informed the court that he was subject to the three-strikes bar and requested return of funds, although he had neither sought leave to proceed in forma pauperis nor paid the filing fee. The court determined that he had three qualifying strikes and had alleged no facts showing that he was under imminent danger of serious physical injury. After being ordered to pay the filing fee or elect whether to proceed or voluntarily dismiss, plaintiff took no action.

PROCEDURAL HISTORY

Plaintiff proceeded as a state prisoner without counsel. After plaintiff asserted that the court had improperly granted in forma pauperis status, the magistrate judge determined that plaintiff was subject to the three-strikes bar of 28 U.S.C. § 1915(g), had not alleged imminent danger of serious physical injury, and therefore had to pay the filing fee. Plaintiff was ordered to notify the court whether he wished to proceed or voluntarily dismiss, but did not respond or pay the fee. The magistrate judge recommended dismissal without prejudice and advised plaintiff of the fourteen-day objection period.

DISPOSITION

remanded

REMAND INSTRUCTIONS

No remand was ordered. The magistrate judge recommended dismissal without prejudice, subject to review by the assigned district judge. Plaintiff could file written objections within fourteen days after service.

CASES CITED

- Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991)

OPINION

(PC) Corral v. Owens

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 DYLAN S. CORRAL, No. 2:24-cv-0282 WBS AC P

12 Plaintiff,

13 v. FINDINGS AND RECOMMENDATIONS

14 OWENS,

15 Defendant. 16

17 Plaintiff is a state prisoner proceeding without a lawyer, seeking relief pursuant to 42 18 U.S.C. § 1983. This action was referred to the undersigned by Local Rule 302 pursuant to 28 19 U.S.C. § 636(b)(1). 20 On September 25, 2024, plaintiff filed a notice stating that the court had erred in granting 21 in forma pauperis (“IFP”) status in this case because he is subject to the three strikes bar under 28 22 U.S.C. § 1915(g). ECF No. 6 at 1. “Plaintiff requests that all funds that the Court received as 23 payment to be returned to Plaintiff directly at the address on the record.” Id. at 1-2. However, 24 plaintiff had neither requested leave to proceed IFP nor paid the filing fee. On December 27, 25 2024, the undersigned confirmed that plaintiff has three strikes and must pay the fee unless he is 26 “under imminent danger of serious physical injury.” See ECF No. 7 at 2 (citing 28 U.S.C. 27 § 1915(g)). The court found that plaintiff had not alleged any facts which suggest that he is under 28 imminent danger of serious physical injury, and thus would be required to submit the appropriate 1 | filing fee to proceed with this action. Id. The court ordered that plaintiff submit, within twenty- 2 || one days from the date of that order, a notice of election informing the court whether he wants to 3 || proceed or voluntarily dismiss this case. Id. 4 The time for plaintiff to notify the court as to how he wishes to proceed has now passed, 5 || and plaintiff has not made an election, otherwise responded to the order, or paid the filing fee. 6 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed without 7 || prejudice. 8 These findings and recommendations are submitted to the United States District Judge 9 || assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days 10 || after being served with these findings and recommendations, plaintiff may file written objections 11 | with the court. Such a document should be captioned “Objections to Magistrate Judge’s Findings 12 || and Recommendations.” Plaintiff is advised that failure to file objections within the specified 13 || time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 14 | (9th Cir. 1991). 15 || DATED: April 3, 2025 16 ~ 17 Htttenr— Lhor—e_

ALLISON CLAIRE

18 UNITED STATES MAGISTRATE JUDGE

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