

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 14-40632

United States Court of Appeals
Fifth Circuit

FILED

April 9, 2015

Lyle W. Cayce
Clerk

JAMES BELL MCCOY,

Plaintiff-Appellant

v.

OWEN MURRAY; LANETTE LINTHICUM, Director, Texas Department of Criminal Justice Medical Services; PAM PACE, Practice Manager, Michael Unit,

Defendants-Appellees

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:14-CV-228

Before HIGGINBOTHAM, JONES, and HIGGINSON, Circuit Judges.

PER CURIAM:*

James Bell McCoy, Texas prisoner # 1299701, moves for leave to proceed in forma pauperis (IFP) to appeal the district court's dismissal of his 42 U.S.C. § 1983 complaint pursuant to the three-strikes provision of 28 U.S.C. § 1915(g). Under § 1915(g), a prisoner may not proceed IFP in an appeal of a judgment in a civil action if the prisoner has, on three or more prior occasions, while

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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incarcerated, brought an action or appeal that was dismissed as frivolous or malicious or for failure to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury. § 1915(g).

McCoy does not dispute that he has three strikes but argues that the § 1915(g) bar should not apply because he is under imminent danger of a serious physical injury. In support of this contention, he states that he is in pain and has difficulty sleeping because of delays in receiving medication, and that there is a likelihood of unnecessary delay in receiving future medication from prison officials. McCoy has failed to demonstrate that he was under imminent danger of serious physical injury at the time that he filed his complaint in the district court, proceeded with his appeal, or moved to proceed IFP. *See id.*; *Baños v. O'Guin*, 144 F.3d 883, 884 (5th Cir. 1998); *Arvie v. Tanner*, 518 F. App'x 304, 304–05 (5th Cir. 2013).

McCoy's motion for leave to proceed IFP is DENIED, and the appeal is DISMISSED as frivolous. *See* 5TH CIR. R. 42.2; *Baugh v. Taylor*, 117 F.3d 197, 202 n.24 (5th Cir. 1997). McCoy's motion to expedite the ruling on his motion for leave to proceed IFP is DENIED as moot.