

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

CHRISTOPHER L AMERSON,

Plaintiff,

V.

**COMMISSIONER TYRONE
OLIVER, *et al.*,**

Defendants.

Case No. 5:24-cv-149-MTT-AGH

RECOMMENDATION OF DISMISSAL

In accordance with the Court's previous orders and instructions, *pro se* Plaintiff Christopher L. Amerson filed his prison trust fund account information (ECF No. 10) and a renewed motion for leave to proceed *in forma pauperis* (ECF No. 11). Though these filings are untimely, Plaintiff also filed a motion for an extension of time to file them (ECF No. 9) and a motion to cure default (ECF No. 8) in which he explains his delayed response. The undersigned thus declines to recommend dismissal because of this delay, but for the reasons discussed below, it is **RECOMMENDED** that Plaintiff's motions for leave to proceed *in forma pauperis* be **DENIED**, that this action be **DISMISSED without prejudice**, and that Plaintiff's pending motions be **DENIED as moot**.

DISCUSSION

Federal law bars a prisoner from bringing a civil action in federal court *in forma pauperis*

if [he] 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 States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). This is known as the “three strikes provision.” Under § 1915(g), a prisoner incurs a “strike” any time he has a federal lawsuit or appeal dismissed on the grounds that it is (1) frivolous, (2) malicious, or (3) fails to state a claim. *See Medberry v. Butler*, 185 F.3d 1189, 1192 (11th Cir. 1999); *see also Daker v. Comm’r, Ga. Dep’t of Corr.*, 820 F.3d 1278, 1283-84 (11th Cir. 2016) (confirming that “these three grounds are the *only* grounds that can render a dismissal a strike”). Once a prisoner incurs three strikes, his ability to proceed *in forma pauperis* in federal court is greatly limited: leave to proceed *in forma pauperis* may not be granted unless the prisoner is under imminent danger of serious physical injury. *Medberry*, 185 F.3d at 1192.

A review of court records on the Federal Judiciary’s Public Access to Court Electronic Records database reveals that Plaintiff filed multiple lawsuits, and at least three of his complaints have been dismissed as frivolous, malicious, or for failure to state a claim and constitute strikes under § 1915(g). *See, e.g., Amerson v. Deberry*, Order Dismissing Compl., ECF No. 15 in Case No. 1:20-cv-03326-LMM (N.D. Ga. Nov. 3, 2020) (adopting recommendation to dismiss pursuant to 28 U.S.C. § 1915A); *Amerson v. Allen*, Order Dismissing Compl., ECF No. 35 in Case No. 6:18-cv-00062-JRH-BWC (S.D. Ga. Mar. 25, 2019) (adopting recommendation to dismiss as abuse of judicial process); *Amerson v. Allen*, Order Dismissing Compl., ECF No. 18 in Case No.

6:17-cv-00156-JRH-BWC (S.D. Ga. July 23, 2018) (adopting recommendation to dismiss as abuse of judicial process); *Amerson v. Allen*, Order Dismissing Appeal, ECF No. 13 in Appeal No. 19-11379 (11th Cir. Aug. 7, 2019) (three judge panel dismissing appeal as frivolous).¹

Plaintiff is thus barred from pursuing this action *in forma pauperis* unless he is in imminent danger of serious physical injury. 28 U.S.C. § 1915(g). To qualify for this exception, a prisoner must allege specific facts that describe an “ongoing serious physical injury,” or “a pattern of misconduct evidencing the likelihood of imminent serious physical injury.” *Sutton v. Dist. Attorney’s Office*, 334 F. App’x 278, 279 (11th Cir. 2009) (internal quotation marks omitted). Complaints of past injuries are not sufficient. *See Medberry*, 185 F.3d at 1193. Vague and unsupported claims of possible dangers likewise do not suffice. *See White v. State of Colo.*, 157 F.3d 1226, 1231 (10th Cir. 1998). The exception to § 1915(g) is to be applied only in “genuine emergencies,” when (1) “time is pressing,” (2) the “threat or prison condition is real and proximate,” and (3) the “potential consequence is serious physical injury.” *Lewis v. Sullivan*, 279 F.3d 526, 531 (7th Cir. 2002). In conducting this analysis, the prisoner’s complaint must be viewed “as a whole,” and the allegations of the complaint are construed liberally and generally taken as true. *Brown v. Johnson*, 387 F.3d 1344, 1350 (11th Cir. 2004).

Plaintiff’s claims arise from his treatment in the Tier program at Macon State

¹ The Eleventh Circuit has held that a dismissal for abuse of the judicial process “is precisely the type of strike that Congress envisioned when drafting section 1915(g).” *Rivera v. Allin*, 144 F.3d 719, 731 (11th Cir. 1998), *abrogated on other grounds by Jones v. Bock*, 549 U.S. 199, 214 (2007).

Prison (“MSP”) in Oglethorpe, Georgia. Compl. 5, ECF No. 1. Plaintiff alleges that the cells on the Tier are not properly illuminated, which causes “a systemic safety problem,” particularly when coupled with inadequate staffing and other alleged violations of the prison’s safety policies described in the Complaint. *Id.* at 7-8, 9-10. Plaintiff also alleges he requested protective custody at MSP on March 3, 2024, due to “a past physical conflict” with gang members also housed on the Tier, but he was never moved to a different cell. *Id.* at 8. Plaintiff contends he has been “injured two times in conflicts he has had with [the] inmate he was forced to live in the cell with by the Defendants.” *Id.* at 9. Plaintiff further contends Defendants at MSP violated the prison’s use-of-force policies, and those violations resulted in improperly documented injuries. *Id.* He also alleges that Defendants at MSP failed to properly evaluate his medical complaints or provide him with adequate care for chronic hepatitis and liver issues. *Id.* at 11-12.

Plaintiff, however, also acknowledges that he was transferred from MSP to a different facility just “a few days after having filed his complaint” in this case. Mot. to Cure Default 1, ECF No. 8.² Plaintiff’s transfer to an entirely new facility renders the imminent danger inquiry moot regarding his confinement at Macon State Prison. *See, e.g., Medberry*, 185 F.3d at 1193 (holding that allowing plaintiff to amend

² Plaintiff may have been transferred to both Hancock and Telfair State Prisons. *See, e.g.,* Mot. to Cure Default 1, ECF No. 8 (stating that Plaintiff ultimately received documents that were mailed to Hancock State Prison by the Clerk on or about July 6, 2024); Mot. Ext. Time 1, ECF No. 9 (indicating Plaintiff “never received a referral or order before leaving H.S.P”). Though it is not clear how long Plaintiff was at Hancock State Prison, it appears Plaintiff is now housed in Telfair State Prison. *See, e.g.,* Attach. 1 to Mot. Ext. Time 1, ECF No. 9-1 (envelope with Telfair State Prison return address). The Clerk is accordingly **DIRECTED** to change Plaintiff’s address of record to his current address at Telfair State Prison. Plaintiff is reminded that he must notify the Court in writing of any changes in his mailing address, or he risks dismissal of his lawsuits.

complaint would be futile where plaintiff could not show he was in imminent danger of serious physical injury from being placed in the general population at the prison where he was housed when he filed his complaint because he was transferred to another facility shortly after filing); *Owens v. Schwartz*, 519 F. App'x 992, 994 (11th Cir. 2013) (holding that “even if [prisoner] had been in imminent danger of serious physical injury from his cell mate and the failure of prison officials to protect him, that danger had passed” when he was transferred after he filed his complaint and “[a]n allegation of past imminent danger will not invoke the ‘imminent danger’ exception”); *see also Daker v. Ward*, 999 F.3d 1300, 1307 (11th Cir. 2021) (noting that the court had previously, “in a single judge order, concluded that Daker’s imminent danger allegations as to GSP were moot because Daker had since been transferred first to Macon State Prison and then Valdosta State Prison,” and thus his “GSP allegations ‘no longer [were] relevant to whether he is in imminent danger of serious physical injury’”); *Jacoby v. Young*, 838 F. App'x 508, 510 (11th Cir. 2021) (concluding that prisoner had not shown imminent danger of serious physical injury because record established that he had been transferred to a different facility since filing and no evidence suggested he would be returned to facility where he was injured by prison officials); *Barber v. Krepp*, 680 F. App'x 819, 821-22 & n.3 (11th Cir. 2017) (rejecting argument that transfer to another prison rendered imminent danger inquiry moot because prisoner alleged facts suggesting that retaliation would continue regardless of transfer, but noting that “if it later becomes clear that the transfer has ended any risk of retaliation, the district court would be obligated to reconsider this issue”). *But*

see Smith v. Dewberry, 741 F. App'x 683, 687 n.3 (11th Cir. 2018) (finding that transfer that occurred after filing appeal would not affect imminent danger analysis because “that analysis focuses on whether [the prisoner] alleged an imminent danger at the time his complaint was filed”). Although Plaintiff mentions “systemic health and safety issues” in his Complaint, those issues appear to be confined to the Tier program at Macon State Prison. *See, e.g.*, Compl. 6, ECF No. 1. Plaintiff does not allege any specific facts suggesting these same “systemic” problems cause him to be in imminent danger at his current facility.

For this reason, Plaintiff failed to demonstrate that he should be excepted from the § 1915(g) bar, and his motions for leave to proceed *in forma pauperis* should be denied without prejudice to his right to refile with pre-payment of the full \$405.00 filing fee. *See Dupree v. Palmer*, 284 F.3d 1234, 1236 (11th Cir. 2002) (“[T]he proper procedure is for the district court to dismiss the complaint without prejudice when it denies the prisoner leave to proceed *in forma pauperis* pursuant to the three strikes provision of § 1915(g).”).

CONCLUSION

For the foregoing reasons, it is **RECOMMENDED** that Plaintiff's motions to proceed *in forma pauperis* in this action (ECF Nos. 2, 11) be **DENIED**, that this action be **DISMISSED WITHOUT PREJUDICE**, and that his remaining pending motions (ECF Nos. 8, 9) be **DENIED as moot**.

OBJECTIONS

Pursuant to 28 U.S.C. §636(b)(1), the parties may serve and file written

objections to these recommendations with the Honorable Marc T. Treadwell, United States District Judge, **WITHIN FOURTEEN (14) DAYS** after being served with a copy of this recommendation. The parties may seek an extension of time to file objections, provided a request for an extension is filed prior to the deadline for filing written objections. Any objection should be no longer than **TWENTY (20) PAGES** in length. *See* M.D. Ga. L.R. 7.4. Failure to object in accordance with the provisions of § 636(b)(1) waives the right to challenge on appeal the district judge's order based on factual and legal conclusions to which no objection was timely made. *See* 11th Cir. R. 3-1.

SO RECOMMENDED, this 17th day of September, 2024.

s/ Amelia G. Helmick

UNITED STATES MAGISTRATE JUDGE