

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DARRYL A. LIVERMAN,	:	
	:	
Plaintiff	:	
	:	CIVIL NO. 1:CV-04-1425
vs.	:	
	:	(Judge Caldwell)
JAMES GRACE, <u>ET AL.</u> ,	:	
	:	
Defendants	:	

M E M O R A N D U M

I. Introduction

Plaintiff, Darryl Liverman, an inmate incarcerated at the Rockview State Correctional Institution ("SCI-Rockview"), Bellefonte, Pennsylvania, filed this action pursuant to 42 U.S.C. § 1983. Named as defendants are SCI-Rockview's Superintendent, James Grace; Deputy Superintendent of Centralized Services, A. Scott Williamson; Chief of Psychiatry, Dr. Frederick Wawrose; Chief of Psychology, Dr. Kenneth Ley; Unit Manager, Pat Elliot; and Corrections Counselor, Barbara Hollibaugh. Plaintiff alleges, *inter alia*, that he is not receiving proper treatment for his Anti-Social Personality Disorder. (Doc. 1).

Simultaneous to the filing of his complaint, Liverman submitted an application requesting leave to proceed *in forma pauperis*. (Doc. 2). For the reasons outlined below Plaintiff's complaint will be dismissed without prejudice, pursuant to 28

U.S.C. § 1915(g). His motion to proceed *in forma pauperis* is moot.

*II. Standard of Review*

The Prison Litigation Reform Act of 1996 ("PLRA"), in an effort to halt the filing of meritless inmate litigation, enacted what is commonly referred to as the "three strikes" provision. Codified at 28 U.S.C. § 1915(g), the "three strikes" rule provides that an inmate who has had three prior actions or appeals dismissed as frivolous, malicious, or for failing to state a viable claim may not proceed in a civil action *in forma pauperis* "unless the prisoner is in imminent danger of serious physical injury." See 28 U.S.C. § 1915(g), and *Abdul-Akbar v. McKelvie*, 239 F.3d 307, 312 (3d Cir 2001) (en banc), cert. denied, 533 U.S. 953 (2001). The "imminent danger" exception to § 1915(g)'s "three strikes" rule is available "for genuine emergencies," where "time is pressing" and "a threat ... is real and proximate." *Lewis v. Sullivan*, 279 F.3d 526, 531 (7th Cir.2002).

Dismissals of actions entered prior to the effective date of the PLRA are counted toward the "three strikes" referred to in 28 U.S.C. § 1915(g). See *Keener v. Pennsylvania Board of Probation and Parole*, 128 F.3d 143, 144-45 (3d Cir.1997) (holding

that dismissals based on frivolousness before 1996 "are included among the three that establish the threshold for requiring a prisoner to pay the full docket fees unless the prisoner can show s/he is 'under imminent danger of serious physical injury'"). The "three strikes" provision does not bar disqualified inmates from filing additional actions, but it does deny them the opportunity to proceed in forma pauperis and requires them to pay the \$150.00 filing fee.

*III. Discussion*

Since March 2003, Liverman has initiated ten (10) civil actions in this court. Many of these actions were dismissed for failure to exhaust administrative remedies. However, the following three actions, were dismissed as frivolous pursuant to § 1915(e)(2)(B)(i), or failure to state a claim upon which relief may be granted pursuant to § 1915(e)(2)(B)(ii): *Liverman v. Beard, et al.*, Civil No. 1:CV-03-1821 (M.D. Pa. December 9, 2003) (Caldwell, J); *Liverman v. Beard, et al.*, Civil No. 1:CV-03-2198 (M.D. Pa. January 9, 2004) (Caldwell, J); *Liverman v. Grace, et al.*, Civil No. 1:CV-04-0995 (M.D. Pa. May 25, 2004) (Caldwell, J).

As for Liverman's present action, there is no indication that Plaintiff is in danger of imminent "serious physical injury." Plaintiff acknowledges in his application to

proceed *in forma pauperis* that he has filed three or more actions or appeals that were dismissed as frivolous, malicious, or for failure to state a claim. See Doc. 2, Application to Proceed In Forma Pauperis, ¶ 3. He also responded in the negative to the inquiry of whether he was seeking relief because he was "under imminent danger of serious physical injury." *Id.* Consequently, the above- captioned action will be dismissed under § 1915(g).

We will issue an appropriate order.

/s/William W. Caldwell  
William W. Caldwell  
United States District Judge

Date: July 21, 2004

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	:	
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O R D E R

AND NOW, this 21st day of July, 2004, for the reasons set forth in the accompanying Memorandum, IT IS ORDERED THAT:

1. Plaintiff's motion to proceed *in forma pauperis* (Doc. 2) is moot and is denied.
2. Plaintiff's complaint is dismissed, without prejudice, pursuant to 28 U.S.C. § 1915(g).
3. The Clerk of Court is directed to close this case.
4. Any appeal from this order will be deemed not taken in good faith. See 28 U.S.C. § 1915(a).

/s/William W. Caldwell  
William W. Caldwell  
United States District Judge