

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

EDWARD JAMES NICHOLAS,	:	CIVIL NO. 4:08-CV-02311
	:	
Plaintiff	:	(Judge Jones)
	:	
v.	:	(Magistrate Judge Smyser)
	:	
HARRISBURG POLICE BUREAU,	:	
DONALD E. HEFFNER,	:	
INTERNAL REVENUE SERVICE,	:	
UNKNOWN INSURANCE COMPANY,	:	
	:	
Defendants	:	

ORDER

The plaintiff, a Pennsylvania state prisoner proceeding *pro se*, commenced this action by filing a complaint in the United States District Court for the Eastern District of California. The plaintiff also filed an application for leave to proceed *in forma pauperis*. By an Order of Magistrate Judge Kimberly J. Mueller dated December 22, 2008, the case was transferred to this court. By an Order dated January 9, 2009, the case was referred to the undersigned magistrate judge for pre-trial management.

28 U.S.C. §1915(g) (commonly referred to as the three-strikes provision) provides:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner 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.

The plaintiff has filed at least four cases in this Court which have been dismissed as frivolous. *See Nicholas v. Dauphin County Common Pleas*, 3:CV-07-2218 (M.D.Pa. Dec. 21, 2007) (Vanaskie, J.); *Nicholas v. Barker*, 4:CV-06-1541 (M.D.Pa. Oct. 3, 2006) (Caputo, J.); *Nicholas v. Evans*, 4:CV-06-1414 (M.D.Pa. Aug. 21, 2006) (Jones, J.); *Nicholas v. Heffner*, 4:CV-06-1478 (M.D.Pa. Aug. 21, 2006) (Jones, J.). All of those cases were commenced by the plaintiff while he was incarcerated. The plaintiff is currently incarcerated and he was incarcerated when he commenced the instant action. *See Doc.1-2*. Thus, the plaintiff may not proceed *in forma pauperis* in this action unless he was under imminent danger

of serious physical injury at the time he filed his complaint in this case. In this case the plaintiff's claims relate to a 1997 arrest and his subsequent incarceration. There is no allegation or indication that the plaintiff is in imminent danger of serious physical injury. Accordingly, pursuant to 28 U.S.C. § 1915(g), the plaintiff may not proceed *in forma pauperis* in this case.¹

We will deny the plaintiff's application to proceed *in forma pauperis*, and we will order him to pay the full filing fee. If the plaintiff does not pay the filing fee in this case we will recommend that the case be dismissed for failure to pay the filing fee.

¹ The plaintiff has been barred from proceeding *in forma pauperis* in this Court on at least nine prior occasions. See *Nicholas v. Evans*, 3:CV-07-1716 (M.D.Pa. Dec. 4, 2007) (Caputo, J.); *Nicholas v. Dauphin County Clerks Office*, 3:CV-07-0228 (M.D.Pa. Feb. 21, 2007) (Caputo, J.); *Nicholas v. Harrisburg Police Station*, 3:CV-07-0227 (M.D.Pa. Feb. 8, 2007) (Caputo, J.); *Nicholas v. Long*, 3:CV-07-0226 (M.D.Pa. Feb. 8, 2007) (Caputo, J.); *Nicholas v. Dils*, 3:CV-07-0225 (M.D.Pa. Feb. 8, 2007) (Caputo, J.); *Nicholas v. USA*, 3:CV-06-2046 (M.D.Pa. Oct. 20, 2006) (Caputo, J.); *Nicholas v. Engle*, 3:CV-06-1850 (M.D.Pa. Oct. 5, 2006) (Caputo, J.); *Nicholas v. Engle*, 3:CV-06-1851 (M.D.Pa. Oct. 5, 2006) (Caputo, J.); *Nicholas v. Zimmerman*, 3:CV-06-1852 (M.D.Pa. Oct. 5, 2006) (Caputo, J.).

IT IS ORDERED that the plaintiff's application to proceed *in forma pauperis* is **DENIED**. **IT IS FURTHER ORDERED** that, on or before February 23, 2009, the plaintiff shall pay the full \$350.00 filing fee. If the plaintiff fails to pay the filing fee within this time, it will be recommended that this case be dismissed.

/s/ J. Andrew Smyser

J. Andrew Smyser
Magistrate Judge

Dated: January 22, 2009.