

CPS-7

October 6, 2005

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 05-3270

SEAN CARLOS BURKE

VS.

JEFFREY A. BEARD, ET AL.

(M.D. Pa. Civ. No. 03-cv-00165)

Present: ALITO, BARRY AND SMITH. CIRCUIT JUDGES

Submitted are:

- (1) Appellant's motion for leave to appeal in forma pauperis and affidavit in support thereof, under Federal Rules of Appellate Procedure;
- (2) Appellant's document titled "Appellant's Memorandum of Law in Support of the Motion Seeking Leave of This United States Court of Appeals to be Granted In Forma Pauperis Status," which the Court may wish to treat as a Statement of Imminent Danger;
- (3) By the Clerk for possible dismissal due to a jurisdictional defect; and
- (4) Appellant's document titled "Notice," which the Court may wish to treat as a response to this Court's notice of possible dismissal for a jurisdictional defect.

in the above-captioned case.

Respectfully,

Clerk

MMW/AJM/clw

ORDER

The foregoing motion for leave to appeal in forma pauperis (IFP) is denied. A prisoner may not proceed IFP on appeal if three of his prior cases were dismissed as frivolous unless he "is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g). Three of Appellant's prior cases were dismissed as frivolous. See Burke v. Dark, C.A.

No. 01-1877; Burke v. Dark, C.A. No. 02-1889, and Burke v. DiPrinzio, E.D. Pa. Civ. No. 01-cv-02462. Further, Appellant was not in imminent danger of serious physical injury at the time he filed this appeal. See Abdul-Akbar v. McKelvie, 239 F.3d 307, 312 (3d Cir. 2001). Appellant shall pay to the District Court the entire filing and docketing fee of \$255.00 within 14 days of the entry of this order. Failure to pay these fees will result in dismissal of the appeal pursuant to Third Circuit L.A.R. 107.1 and 3.3. If Appellant pays the full fees within the time permitted, the appeal will be submitted to a panel for possible dismissal due to a jurisdictional defect.

By the Court,

/s/ Samuel A. Alito, Jr.

Circuit Judge

Dated: October 21, 2005
CLW/cc: Mr. Sean Carlos Burke
Francis R. Filipi, Esq.