

pre-payment of the requisite filing fee.

The statute governing in forma pauperis proceedings, 28 U.S.C. § 1915, generally prohibits a prisoner from obtaining authority to file an action without pre-payment of the \$150 filing fee where three or more prior federal court actions or appeals brought by the inmate have been dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted. Specifically, subpart (g) of 28 U.S.C. § 1915 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 three 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.²

In his application to proceed in forma pauperis (Dkt. Entry 7), Weaver acknowledges that he has brought three or more actions or appeals in a court of the United States that have been dismissed as frivolous, malicious, or failing to state a claim upon which relief may be granted. He nonetheless claims entitlement to proceed under § 1915 on the ground that he is seeking relief because he is under imminent danger of serious physical injury. In support of this assertion, Weaver avers:

¹(...continued)
(10) Weaver v. Weachter, No. 1:86-CV-0367

²This statutory limitation on in forma pauperis proceedings by inmates is generally referred to as the "three strikes" rule. See Lewis v. Sullivan, 279 F.3d 526, 527 (7th Cir. 2002).

A counselor at SCI-Dallas informed plaintiff that if he did not confess that he committed the crimes that he is incarcerated for he would be dead within five years. This statement was made on 8/01/00.

(Application to Proceed In Forma Pauperis (Dkt. Entry 7) at 2.)

Weaver's invocation of the "imminent danger" exception to the three strikes rule is unavailing. Weaver's action does not seek relief against this unnamed counselor at SCI-Dallas. Weaver does not identify as a defendant any person who presently poses a threat to his safety. Indeed, Weaver names as defendants only persons who worked at his prior place of confinement, SCI-Huntingdon, as well as the Honorable Yvette Kane of this Court. His complaint alleges that certain property was confiscated while he was at SCI-Huntingdon and that he was transferred to SCI-Dallas in retaliation for having given confidential testimony concerning alleged illegal activities at SCI-Huntingdon. Weaver further avers that Judge Kane conspired with the Department of Corrections defendants "to stop Plaintiff in the courts by issuing several harassing and questional [sic] court orders in the Civil Action against the Correctional Staff at Huntingdon. No. 1:CV-99-352." (Complaint, ¶ 11.) As relief, Weaver asks that the Department of Corrections defendants be compelled to make restitution to him for the property that was purportedly wrongfully confiscated; that a declaratory judgment be entered decreeing that Judge Kane "acted wrongfully, and that her acts constituted a conflict of interest"; and that a declaratory judgment be entered, "stating [that] the transfer of the Plaintiff violated Plaintiff's right to procedural due process and that the transfer was unconstitutional."

(Complaint, ¶ 3.) Weaver does not seek equitable relief to avoid a purported threat to his safety.

The purpose of the "imminent danger" exception to the "three strikes" rule is to enable a plaintiff to obtain relief to prevent an impending harm. See Abdul-Akbar v. McKelvie, 239 F.3d 307, 315 (3d Cir.) (en banc), cert. denied, 533 U.S. 953 (2001). "The imminent danger exception to the 'three strikes' rule contained in 28 U.S.C. § 1915(g) may be invoked by a prisoner only to seek relief from a danger which is imminent at the time that the complaint is filed." Wilson v. 52nd District Court, No. Civ.A. 02CV71217DT, 2002 WL 1009561, at *2 (E.D. Mich. April 25, 2002).

In this case, Weaver does not seek to obtain relief from a defendant who has any control over his current confinement at SCI-Dallas. As noted above, he names as defendants only SCI-Huntingdon officials and Judge Kane. The Tenth Circuit has ruled that an inmate could not rely upon the "imminent danger" exception where he claimed a threat to his life in his current place of confinement, but sought relief only from defendants located in another prison. Day v. Maynard, 200 F.3d 665, 667 (10th Cir. 1999) (per curiam). A similar result was reached in Wilson, supra, in which the court noted that "[a]ny allegations of constitutional deprivations against the plaintiff by the defendants are insufficient to obtain relief under the imminent danger exception, since his complaint targets persons or parties who plaintiff has failed to show have any control over his current conditions of confinement" 2002 WL 100956,1at *2. As none

of the defendants named by Weaver has any control over either the conditions or place of his confinement, he, too, may not invoke the "imminent danger" exception.

Weaver's averment of "imminent danger" is even more disconnected to the claims of his lawsuit because the purported threat has nothing to do with the retaliation claim asserted in this action. Weaver claims that he was subjected to retaliation for providing testimony concerning alleged illegal activity occurring at SCI-Huntingdon.³ Weaver claims that his life is in danger now, not because he gave testimony against prison officials, but because he refuses to acknowledge responsibility for the criminal conduct of which he stands convicted. Thus, it does not appear that his alleged constitutionally protected activity at SCI-Huntingdon has anything to do with the alleged threat to his life.⁴

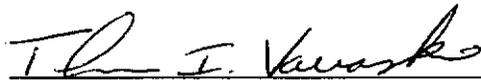
Finally, Weaver's assertion is too vague and conclusory to support invocation of the "imminent danger" exception. The counselor is not identified. Nor is there any indication that Weaver has been placed in jeopardy while at SCI-Dallas. "Conclusory allegations do not bring a prisoner within the imminent danger exception to the three strikes rule." Wilson, 2002 WL 1009561, at *2.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

³Transferring Weaver from SCI-Huntingdon was plainly reasonable in light of Weaver's allegations that he gave testimony against SCI-Huntingdon staff.

⁴Weaver claims that the threat was made in August of 2000, approximately four months after he was transferred to SCI-Dallas. He does not allege that he has sought any relief, administratively or otherwise, with respect to this alleged threat.

1. Plaintiff's application to proceed in forma pauperis is **DENIED**.
2. This action is **DISMISSED, WITHOUT PREJUDICE**.⁵
3. The Clerk of Court is directed to mark this matter **CLOSED**.



Thomas I. Vanaskie, Chief Judge
Middle District of Pennsylvania

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⁵Weaver, of course, may bring this action by paying the full filing fee. In dismissing this action under 28 U.S.C. § 1915(g), no opinion is intimated with respect to the viability of any of the claims asserted by Weaver. Any action brought by Weaver upon payment of the full filing fee will nonetheless be subject to the screening provisions of 28 U.S.C. § 1915A.