

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ALLEN BENNETT,	)	
	)	
Plaintiff,	)	Civil Action No. 1:18-cv-18
	)	Judge Cathy Bissoon/
v.	)	Chief Magistrate Judge Maureen P. Kelly
	)	
SABRINA GORE, SHAREEF GORE,	)	
ANTONIO PITTS, PASTOR SECOND	)	
BAPTIST CHURCH, BRIAN GORE, and	)	
DANICA ROWAN,	)	
	)	
Defendants.	)	

**REPORT AND RECOMMENDATION**

**I. RECOMMENDATION**

It is recommended that the Motion for Leave to Proceed In Forma Pauperis (“the IFP Motion”), ECF No. 1, be denied because Allen Bennett (“Plaintiff”) has acquired at least three strikes and thus is not permitted to proceed in forma pauperis (“IFP”) and his proposed Complaint does not reveal imminent risk of serious physical injury.

**II. REPORT**

Plaintiff is currently incarcerated in the Erie County Prison. According to the proposed Complaint, Plaintiff was arrested by federal authorities in December, 2014 and “charged with traveling to the Commonwealth from Chicago, Illinois, failing to register as a sex offender.” ECF No. 1-2 ¶ 26. We take judicial notice of the dockets in Plaintiff’s federal criminal case for failing to register as a sex offender. USA v. Bennett, No. 1:14-cr-35 (W.D. Pa.). According to the docket in the criminal case, it appears that Plaintiff remains subject to a term of supervised release. See id. (ECF No. 148, Petition for Warrant or Summons for Offender Under

Supervision). Plaintiff had been convicted of sex offenses in Illinois, requiring him to register as a sex offender in the Commonwealth of Pennsylvania and Plaintiff failed to do so. While serving his sentences in Illinois for his sexual offenses as well as other offenses, Plaintiff was a prolific pro se litigator with a long history of filing prisoner civil rights suits and habeas petitions in the federal courts of Illinois. As a consequence of his litigation history in Illinois, Plaintiff has acquired at least “three strikes” and is not permitted to proceed IFP. Therefore, it is recommended that the instant IFP Motion be denied and that Plaintiff be ordered to pay the filing fee within a time certain or face dismissal of the case for failure to prosecute.

**A. Plaintiff Has at Least Three Strikes.**

It is a plaintiff’s burden to prove entitlement to IFP status. See White v. Gregory, 87 F.3d 429, 430 (10<sup>th</sup> Cir. 1996); New Assessment Program v. PNC Corp., No. Civ.A. 95-6059, 1995 WL 592588, at \*1 (E.D. Pa. Oct. 3, 1995); In re Lassina, 261 B.R. 614, 618 (E.D. Pa. 2001) (“The applicant bears the burden of proving her entitlement to IFP relief by a preponderance of the evidence.”). A plaintiff who has three strikes, bears the burden of showing that he is in “imminent danger of serious physical injury.” Bullock v. Berrier, No. CIV.A. 15-1J, 2015 WL 5439207, at \*3 (W.D. Pa. Sept. 15, 2015) (“it is for this Court to resolve the question of whether Plaintiff has carried his burden to show imminent danger of serious physical injury.”) (footnote omitted).

In considering the pending IFP Motion, this Court takes judicial notice of court records and dockets of the federal courts. DiNicola v. DiPaolo, 945 F. Supp. 848, 854 n.2 (W.D. Pa. 1996) (court is entitled to take judicial notice of public records). A review of the electronic

dockets of these federal courts reveals that Plaintiff has accumulated at least three “strikes” within the contemplation of 28 U.S.C. § 1915(g)<sup>2</sup> which provides in relevant part that:

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.

In this case, Plaintiff is a “prisoner” within the meaning of 28 U.S.C. § 1915(g).<sup>3</sup>

Not only does Plaintiff have at least three strikes, in fact it appears that Plaintiff has four strikes as follows:

1) Bennett v. McConnell, No. 91 C 5565 (N.D. Ill. ECF No. 5, order dismissing case with prejudice before service pursuant to 28 U.S.C. § 1915(d) filed on Sept. 25, 1991);

2) Bennett v. Welborn, No. 91 C 0376 (S.D. Ill. ECF No. 10, order dismissing action as frivolous filed on Jan. 9. 1992);

3) Bennett v. Troka, No. 01 C 8843 (N.D. Ill. ECF No. 4, order dismissing the action pursuant to 28 U.S.C. §1915A for failure to state a claim, filed on Jan. 14, 2002);

4) Bennett v. Pernecke, No. 03 C 5071 (N.D. Ill. ECF No. 30 at 4, order noting that “Bennet’s appeal, like his action in this District Court, is frivolous in the legal sense. Although this Court had to issue four separate opinions to dispose of the case, that was occasioned only by Bennett’s initially naming multiple defendants who presented different analytical requirements, then filing a First Amended Complaint that added some new defendants while dropping others. But his claims

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<sup>2</sup> Abdul-Akbar v. McKelvie, 239 F.3d 307, 310 (3d Cir. 2001) (noting that 28 U.S.C. § 1915(g) is “popularly known as the ‘three strikes’ rule”), cert. denied, 533 U.S. 953 (2001).

<sup>3</sup> The term prisoner as used in Section 1915 means “any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.” 28 U.S.C. § 1915(h).

against all the defendants were patently lacking in substance.” Order filed on December 19, 2003).

See also Bennett v. Blagojevich, No. 3:07-cv-239 (S.D. Ill. ECF No. 26 order from the United States Court of Appeals for the Seventh Circuit denying Plaintiff leave to appeal in forma pauperis because he has three strikes). Accordingly, Plaintiff may not proceed in forma pauperis unless he can show “imminent danger of serious physical injury.”

**B. The Complaint Fails to Show Imminent Danger of Serious Physical Injury.**

“Imminent danger” of serious physical injury is measured at the time of the filing of the civil action. Abdul-Abkar v. McKelvie, 239 F.3d 307 (3d Cir. 2001) (imminent danger of physical injury must be assessed as of the time of filing the complaint). Pursuant to the prisoner mail box rule, this civil action is deemed to have been filed on January 10, 2018, the date on which Plaintiff signed his IFP Motion.

In the proposed Complaint, Plaintiff names six defendants, none of whom are employees of the Erie County Prison. Rather, the individuals named are private individuals, three of whom were relatives of Plaintiff’s deceased wife, one of whom had lived in the wife’s house and one who was a pastor who conducted the funeral services for the wife and one was apparently the funeral director of the funeral home where Plaintiff’s deceased wife was laid out. The complaint provides a laundry list of complaints about the relationship Plaintiff had with the defendants who were relatives of Plaintiff’s deceased wife. The gravamen of the proposed Complaint seems to be that after Plaintiff’s wife died, he was not informed of her death, and the defendants made funeral arrangements for the deceased wife without Plaintiff’s permission and without acknowledging the deceased wife’s marital relationship with Plaintiff. ECF No. 1-1 ¶¶ 42 – 51.

Not only does the proposed Complaint fail to demonstrate imminent danger, it fails to demonstrate any danger of serious physical injury at all.

### III. CONCLUSION

For the reasons set forth herein, it is recommended that the pending IFP Motion be denied. If the District Court adopts this Report and Recommendation, Plaintiff, of course, may thereafter pay the entire filing fee within a time certain or face dismissal of the Complaint for failure to prosecute.

In accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Local Rule 72.D.2, the parties are permitted to file written objections in accordance with the schedule established in the docket entry reflecting the filing of this Report and Recommendation. Objections are to be submitted to the Clerk of Court, United States District Court, 700 Grant Street, Room 3110, Pittsburgh, PA 15219. Failure to timely file objections will waive the right to appeal. Brightwell v. Lehman, 637 F.3d 187, 193 n. 7 (3d Cir. 2011). Any party opposing objections may file their response to the objections within fourteen (14) days thereafter in accordance with Local Civil Rule 72.D.2.

/s/Maureen P. Kelly  
MAUREEN P. KELLY  
CHIEF UNITED STATES MAGISTRATE JUDGE

Date: January 25, 2018

cc: The Honorable Cathy Bissoon  
United States District Judge

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