

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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JAMES ALFRED SMITH JR.,

Petitioner,

v.

CHARLES N. CLEVERT,  
WILLIAM C. GRIESBACH,  
JOHN C. SHABAZ, and  
RICK RAEMISCH,

Respondents.  
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ORDER

08-cv-249-bbc

Petitioner James Smith, a prisoner at the Waupun Correctional Institution in Waupun, Wisconsin, has submitted a proposed complaint and a request for leave to proceed in forma pauperis. However, on three or more occasions in the past, while petitioner was a prisoner, he brought an action or appeal in a court of the United States that was dismissed on the ground that it was legally frivolous or failed to state a claim upon which relief may be granted. See Smith v. Frank, 03-C-414 (E.D. Wis. Feb. 12, 2004); Smith v. Frank, 04-C-489 (E.D. Wis. Oct. 4, 2004); and Smith v. Frank, 05-C-476 (E.D. Wis. June 17, 2005). Therefore, he does not qualify for in forma pauperis status under 28 U.S.C.

§ 1915(g) unless his complaint concerns a matter suggesting he is “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

In order to meet the imminent danger requirement of 28 U.S.C. § 1915(g), a petitioner must allege a physical injury that is imminent or occurring at the time the complaint is filed, and the threat or prison condition causing the physical injury must be real and proximate. Ciarpaglini v. Saini, 352 F.3d 328, 330 (7th Cir. 2003) (citing Lewis v. Sullivan, 279 F.3d 526, 529 (7th Cir. 2002) and Heimermann v. Litscher, 337 F.3d 781 (7th Cir. 2003)). The vast majority of petitioner’s complaint does not allege facts from which an inference may be drawn that he is in imminent danger of serious physical injury. Instead, the pleading is almost entirely a rehash of past lawsuits presided over by respondents Clevert, Griesbach and Shabaz. It appears that petitioner is dissatisfied with these judges’ decisions and is asking this court to review approximately 20 closed cases filed in both this district and the Eastern District of Wisconsin. Although these cases appear to involve claims for denial of medical treatment, I can conceive of no scenario in which petitioner would be able to advance a convincing argument that he is in imminent danger of serious physical injury because of the actions of judicial officers during the administration of his cases.

Ordinarily, claims of physical injury arise in the context of lawsuits alleging Eighth Amendment violations. In this case, petitioner’s Eighth Amendment claims appear to be for

wrongdoings that occurred well in the past. In his complaint, petitioner says that “he has been denied care for a serious medical need over a period of ten years by the defendant Raemisch while being held in segregation contrary to physician instructions.” Petitioner claims that his need for medical treatment arises from injuries from a fall that happened in July of 1998 when he was handcuffed and “yanked backwards” by prison guards causing him to fall down the stairs. Petitioner says that because of this fall he suffered a spinal injury and has been rendered “immobile” ever since. Following this incident, a Dr. Springs examined petitioner and arranged for him to be provided a wheelchair and given an MRI<sup>1</sup> scan on his spinal cord. However, after the examination by Dr. Springs, another doctor, Dr. Bridgwater, denied petitioner access to a wheelchair without an examination and a medical director at the Department of Corrections denied the order for an MRI scan.

In the more recent past, petitioner contends that he has been denied medical treatment since his release from segregation in February 2007. He says that because he has been denied medical care he cannot stand or walk and is suffering physically and mentally. Also, petitioner has developed tumors in his colon and penis and has chronic back pain and permanent loss of function in his lower limbs. Petitioner says that his potential suffering is “enormous” because he may “permanently lose the normal use of his legs and back” if he

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<sup>1</sup>In his complaint, petitioner refers to the procedure as a “MIR” scan. I believe petitioner intended to use the term MRI, which stands for “magnetic resonance imaging.”

does not receive proper medical treatment. However, petitioner has not offered any factual information to suggest who at the Waupun Correctional Institution is responsible for denying him medical care.

Because the vast majority of petitioner's complaint is not a complaint requiring application of the exception to § 1915(g), and because petitioner does not appear to have named any respondent in connection with the one possible claim warranting exception, that is, his claim concerning an alleged failure to treat his spinal injuries, tumors and back pain, I am denying petitioner leave to proceed in forma pauperis without prejudice to his filing an amended complaint. If he chooses to file an amended complaint, petitioner is directed to limit his complaint to his claim that he is presently being denied treatment and he is to name as respondents those persons who are allegedly being deliberately indifferent to his serious medical needs at the present time. In drafting his amended complaint, petitioner should keep in mind that his original pleading, as submitted, is extremely difficult to read. The pages of his complaint on lined notebook paper are crammed with two lines of text for each single line. Petitioner should write or type his allegations in larger text and limit himself to one line of text for each line provided on a page.

Alternatively, if petitioner intends to pursue his complaint as is, he may do so only as a paying litigant. In that case, he must submit a check or money order made payable to the clerk of court in the amount of \$350 and he must do so no later than May 27, 2008.

If he does this, however, petitioner should be aware that the court then will be required to screen his complaint under 28 U.S.C. § 1915A, and dismiss his case if the complaint is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant who is immune from such relief.

If petitioner does not file an amended complaint as described above or pay the \$350 filing fee by May 27, 2008, I will consider that he does not want to pursue this action. In that event, the clerk of court is directed to close this file. However, even if petitioner decides not to pursue this action, he will still owe the \$350 filing fee for filing this complaint.

#### ORDER

IT IS ORDERED that petitioner's request for leave to proceed in forma pauperis is DENIED because petitioner is ineligible for in forma pauperis status under 28 U.S.C. § 1915(g) with respect to all of his claims except his claim that he is presently being denied medical treatment for his spinal injuries, tumors and back pain, a claim for which petitioner has named no respondents.

Further, IT IS ORDERED that petitioner may have until May 27, 2008, in which to either

1. File an amended complaint limiting his claim to allegations concerning his present inability to obtain care for his spinal injuries, tumors and back pain

and identifying the respondent(s) responsible for refusing him care; or

2. Submit a check or money order made payable to the clerk of court in the amount of \$350. If, by May 27, 2008, petitioner fails to pay the filing fee, the clerk of court is directed to close this file. However, even in that event, the clerk is to insure that petitioner's obligation to pay the \$350 fee for filing this case is reflected in this court's financial records and that the warden of the Waupun Correctional Institution is advised of petitioner's obligation to pay the fee pursuant to 28 U.S.C. § 1915(b)(2).

Entered this 6<sup>th</sup> day of May, 2008.

BY THE COURT:

/s/

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BARBARA B. CRABB  
District Judge