

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

MELVIN SHELTON,

Petitioner,

v.

JOSEPH HENGER and
JUDY P. SMITH,

Respondents.

ORDER

03-C-708-C

Petitioner Melvin Shelton, a prisoner at the Oshkosh Correctional Institution in Oshkosh, Wisconsin, has filed a proposed complaint for money damages and a request for leave to proceed in forma pauperis. The request will be denied, because petitioner does not qualify for in forma pauperis status under 28 U.S.C. § 1915(g).

Section 1915(g) reads as follows:

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.

On at least three prior occasions, I denied petitioner leave to proceed in forma pauperis in lawsuits that were legally frivolous. See Shelton v. Webster, 93-C-364-C, decided June 8, 1993; Shelton v. Weber, 94-C-526, decided July 26, 1994; and Shelton v. Crivello, 97-C-215, decided April 18, 1997.

Moreover, petitioner's complaint does not allege facts from which an inference may be drawn that he is under imminent danger of serious physical injury. In his complaint, petitioner alleges that respondent Joseph Henger, a “management specialist within Henger Enterprise, Ltd., disclosed confidential patient information to petitioner’s parole agent, who used the information at petitioner’s parole revocation hearing. In addition, petitioner alleges that he was denied meaningful access to the courts and due process when certain of his legal property was lost or misplaced while he was in segregation. Finally, petitioner alleges that the segregation law library is inadequate, in violation of his right of access to the courts.

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, slip op. 01-2657, (7th Cir. Dec. 11, 2003) (citing Lewis v. Sullivan, 279 F.3d 526, 529 (7th Cir. 2002) and Heimermann v. Litscher, 337 F.3d 781 (7th Cir. 2003)). Claims of physical injury ordinarily arise in the context of lawsuits alleging Eighth Amendment violations. I can conceive of no factual scenario under which a

petitioner would be subjected to physical injury by the denial of due process or meaningful access to the courts. Accordingly, petitioner's complaint is not a complaint requiring application of the exception to § 1915(g).

Because petitioner is disqualified from proceeding in forma pauperis under § 1915(g), he may choose to pursue this case as a paying litigant. If so, he must submit a check or money order made payable to the clerk of court in the amount of \$150 and he must do so no later than January 5, 2004. 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 pay the \$150 filing fee by January 5, 2004, 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 the file is closed, petitioner will still owe the \$150 filing fee and he must pay it as soon as he has the means to do so. Newlin v. Helman, 123 F.3d 429, 436-437 (7th Cir. 1997). From petitioner's trust fund account statement, it is clear that he does not presently have the means to pay all of the fee from his prison account. Therefore, unless he is successful in obtaining the money from some other source, I will be required to advise the warden of the Oshkosh Correctional Institution of petitioner's obligation to pay the fee so that the fee can be collected and sent to the court in accordance with 28 U.S.C. §

1915(b)(2).

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).

Further, IT IS ORDERED that petitioner may have until January 5, 2004, in which to submit a check or money order made payable to the clerk of court in the amount of \$150. If, by January 5, 2004, petitioner fails to pay the fee, the clerk of court is directed to close this file.

Entered this 15th day of December, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge