

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

JOHNNY GIBSON,

Plaintiff,

OPINION AND ORDER

v.

14-cv-39-wmc

STATE OF WISCONSIN, *et al.*,

Defendants.

Plaintiff Johnny Gibson (DOC #385510), also known as Johnny Michael Gibson, Jr., is currently confined at the Wisconsin Secure Program Facility in Boscobel as the result of his 2000 conviction for first-degree sexual assault of a child. Pending before the court is Gibson's proposed complaint pursuant to 42 U.S.C. § 1983 against the State of Wisconsin, the Wisconsin Parole Board and the Wisconsin Department of Corrections, concerning Gibson's eligibility for mandatory release from prison. He requests leave to proceed with this claim under the federal *in forma pauperis* statute, *see* 28 U.S.C. § 1915(a). For reasons set forth briefly below, Gibson's request must be denied because he is not eligible to proceed without prepayment of the filing fee.

OPINION

Because he is incarcerated, Gibson's complaint is governed by the Prison Litigation Reform Act (the "PLRA"), which imposes certain conditions on the privilege of proceeding *in forma pauperis*. In particular, under the "three-strikes rule" found at 28 U.S.C. § 1915(g), a prisoner is not allowed to bring a civil action *in forma pauperis* in federal court if, while imprisoned, three or more of his civil actions or appeals have been dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted.

Court records confirm that, while imprisoned, Gibson has filed at least three previous civil actions that were dismissed as frivolous or for failure to state a claim: (1) *Gibson v. Dep't of Children & Family Servs, et al.*, Case No. 06-cv-3978 (N.D. Ill. Nov. 27, 2006); (2) *Gibson v. Dep't of Children & Family Servs, et al.*, Case No. 07-cv-5544 (N.D. Ill. Oct. 9, 2007); and (3) *Gibson v. Rick Raemisch et al.*, 09-cv-322-slc (W.D. Wis. June 15, 2009). Because Gibson has at least three strikes against him, he may not proceed *in forma pauperis* unless the pleadings show that he is in imminent danger of serious physical injury. See 28 U.S.C. § 1915(g).

Here, Gibson's sole claim concerns the Wisconsin statute governing "presumptive mandatory release" and whether it was unconstitutionally applied to him. His allegations do not establish that physical harm is imminent. It follows that Gibson does not satisfy the exception found in § 1915(g) and that he is barred from proceeding without prepayment of the full filing fee in this case.

ORDER

IT IS ORDERED that plaintiff Johnny Gibson's request for leave to proceed *in forma pauperis* (dkt. # 2) is DENIED and this case is DISMISSED without prejudice to re-filing along with prepayment of the \$400.00 filing fee.

Entered this 13th day of February, 2014.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge