

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

WILLIAM R. HOLT,

Plaintiff,

v.

CASE NO. 18-3284-SAC

JOE NORWOOD, et al.,

Defendants.

ORDER

Plaintiff filed this *pro se* civil rights complaint pursuant to 42 U.S.C. § 1983. Plaintiff is subject to the “three-strikes” provision under 28 U.S.C. § 1915(g); he may proceed *in forma pauperis* only if he establishes a threat of imminent danger of serious physical injury. The Court found that Plaintiff’s Complaint presents no claim that Plaintiff was in danger of serious physical injury at the time of filing, and ordered Plaintiff to submit the filing fee. On January 27, 2020, the Court dismissed this case without prejudice under Fed. R. Civ. P. 41(b) for failure to submit the filing fee by the deadline. (Doc. 70.) On February 3, 2019, Plaintiff filed a Notice of Appeal (Doc. 72) and a motion for leave to appeal *in forma pauperis* and for appointment of appellate counsel (Doc. 73).

The Court denied Plaintiff leave to proceed *in forma pauperis* at the district court level and Plaintiff has not satisfied the district court filing fee prerequisite. As a three-strikes litigant,¹ he is

¹ Plaintiff is subject to the “three-strikes” provision under 28 U.S.C. § 1915(g). Court records fully establish that Plaintiff “has, on 3 or more prior occasions, while incarcerated . . . , 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.” See (1) *Holt v. Patty*, No. 17-3149-SAC (D. Kan. Oct. 31, 2017) (dismissing prisoner § 1983 complaint for failure to state a claim), *appeal dismissed for lack of prosecution*, Case No. 17-3243 (10th Cir.); (2) *Holt v. Werholtz*, No. 05-3205-SAC (D. Kan. June 14, 2005) (dismissing prisoner § 1983 complaint for failure to state a claim), (3) *appeal dismissed as frivolous*, No. 05-3260 (assessing another PLRA strike).

likewise not entitled to appeal without prepaying the appellate filing fee unless he shows imminent danger arising from the allegations raised in his Complaint or this appeal. The Court finds that Plaintiff has not shown imminent danger of serious physical injury. Because Plaintiff has not shown that he meets the only exception set forth in § 1915(g), the Court denies leave to appeal *in forma pauperis*. To the extent Plaintiff also seeks the appointment of appellate counsel, such a request is denied without prejudice to refiling after Plaintiff submits the appellate filing fee.

IT IS THEREFORE ORDERED that Plaintiff's motion for leave to proceed without prepayment of fees on appeal and for the appointment of counsel (Doc. 73) is **denied**.

Copies of this order shall be transmitted to Plaintiff and to the Clerk of the U.S. Court of Appeals for the Tenth Circuit.

IT IS SO ORDERED.

Dated February 4, 2020, in Topeka, Kansas.

s/ Sam A. Crow
SAM A. CROW
U. S. Senior District Judge