

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

BRIAN MICHAEL WATERMAN,

Plaintiff,

v.

CASE NO. 19-3237-SAC

JACOB CONARD, et al.,

Defendants.

MEMORANDUM AND ORDER

Plaintiff filed this pro se civil rights action under 42 U.S.C. § 1983. At the time of filing, plaintiff was a detainee housed in the Cherokee County Jail in Columbus, Kansas. Plaintiff currently is incarcerated at the Hutchinson Correctional Facility in Hutchinson, Kansas. The court granted plaintiff leave to proceed in forma pauperis. On May 6, 2022, the court dismissed this matter. The majority of plaintiff's claims were dismissed without prejudice under *Heck v. Humphrey*, 512 U.S. 477 (1994).

On May 11, 2022, plaintiff filed a notice of appeal (Doc. 57). Plaintiff has not paid the appellate filing fee, nor has he filed a motion for leave to proceed in forma pauperis on appeal. Under 28 U.S.C. § 1915(g), "[i]n no event shall a prisoner ... appeal a judgment in a civil or 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." 28 U.S.C. § 1915(g). Plaintiff is a three-strikes litigant.

See in re Brian Michael Waterman, Case No. 21-3049, Doc. 010110507615, at 2 (10th Cir. April 14, 2021) (finding that Mr. Waterman failed to present even a colorable claim to mandamus relief and that dismissal of his petition as frivolous counts as a strike for purposes of § 1915(g)); *Waterman v. Crawford County Jail*, Case No. 18-3035-SAC, Doc. 28 (D. Kan. June 4, 2018) (dismissing for failure to state a claim); and *Waterman v. Tippie*, Case No. 18-3295 JTM-GEB, Doc. 22 (D. Kan. July 8, 2019) (dismissing for failure to state a claim).

As a three-strikes litigant, plaintiff is not entitled to appeal without prepaying the appellate filing fee unless he shows imminent danger of serious physical injury. 28 U.S.C. § 1915(g). Because plaintiff's claims in this matter concern discovery and interference with access to the courts in the criminal proceedings that culminated in his current incarceration, there is no showing that he is in imminent danger of serious physical injury, the sole exception set forth in § 1915(g). The court therefore will deny leave to proceed in forma pauperis on appeal.

IT IS, THEREFORE, BY THE COURT ORDERED that plaintiff is denied leave to proceed on appeal in forma pauperis.

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: This 12th day of May, 2022, at Topeka, Kansas.

S/ Sam A. Crow

SAM A. CROW

U.S. Senior District Judge