

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

BRIAN MICHAEL WATERMAN,

Plaintiff,

v.

CASE NO. 20-3154-SAC

DAVID GROVES, et al.,

Defendants.

MEMORANDUM AND ORDER

Plaintiff filed this *pro se* civil rights action under 42 U.S.C. § 1983. The Court granted Plaintiff leave to proceed *in forma pauperis*. Although Plaintiff is currently incarcerated at the Hutchinson Correctional Facility in Hutchinson, Kansas, his claims are based on conditions during his detention at the Cherokee County Jail in Columbus, Kansas (“CCJ”). On February 1, 2022, the Court entered an Order (Doc. 86) dismissing this matter for failure to state a claim. On February 25, 2022, the Court entered a Memorandum and Order (Doc. 89) granting Plaintiff’s motion for reconsideration to the extent the Court reconsidered its Order dismissing this case in light of Plaintiff’s Response and Affidavit. The Court found that Plaintiff failed to show good cause why Plaintiff’s remaining claims should not be dismissed, and left the February 1, 2022 Order dismissing this case in effect.

On March 2, 2022, Plaintiff filed a Notice of Appeal (Doc. 90). Plaintiff has not paid the appellate filing fee nor has he filed a motion for leave to proceed *in forma pauperis* on appeal. Section 1915(g) provides that “[i]n no event shall a prisoner . . . 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.” 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 Waterman failed to present even a colorable claim to mandamus relief and dismissal of his petition as frivolous counts as a strike for purposes of the three-strikes provision in 28 U.S.C. § 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); *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). Plaintiff’s claims in this case are based on conditions during his detention at the Cherokee County Jail in Columbus, Kansas. Plaintiff is currently incarcerated at the Hutchinson Correctional Facility. 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*.

IT IS THEREFORE ORDERED that Plaintiff is **denied** leave to proceed without prepayment of fees on appeal.

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 March 3, 2022, in Topeka, Kansas.

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