

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

**WALTER PAYTON,**

**Plaintiff,**

**v.**

**CASE NO. 20-3257-SAC**

**LAURA KELLY, et al.,**

**Defendants.**

**ORDER**

Plaintiff filed this pro se civil rights case under 42 U.S.C. § 1983. Plaintiff is incarcerated at the Hutchinson Correctional Facility in Hutchinson, Kansas (“HCF”). On April 21, 2021, the Court dismissed this case for failure to state a claim. (Docs. 11, 12.) On May 4, 2021, the Court denied Plaintiff’s motion for reconsideration. (Doc. 14). This matter is before the Court on Plaintiff’s “Petition for Certificate of Appealability” (Doc. 15.)

Because a certificate of appealability is not necessary in a civil rights action, the Court denies the request as moot. *See Smith v. Cowman*, 208 F. App’x 687, (10th Cir. 2006) (unpublished) (“Because this is a § 1983 action, not a habeas action, the district court properly ruled that the application for a certificate of appealability was moot.”); *Lawson v. Engleman*, 67 F. App’x 524, 527 n.4 (10th Cir. 2003) (unpublished) (“Because a certificate of appealability is not necessary for a prisoner civil rights appeal, we do not consider Lawson’s motion for a certificate of appealability”); *Hicks v. Woodruff*, 216 F.3d 1087 (Table), 2000 WL 854269, at \*4 (10th Cir. June 28, 2000) (unpublished) (denying request for appealability as moot and stating that “[a]n appeal from a district court decision in a 42 U.S.C. § 1983 civil rights case does not require a certificate of appealability”).

Plaintiff may also be seeking to proceed in forma pauperis on appeal. This Court's April 21, 2021 Memorandum and Order found that "[t]his Court's dismissal constitutes Plaintiff's third strike." (Doc. 11, at 6.) 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. Section 1915(g) prohibits a three-strikes prisoner from bringing a civil action or appeal "unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g). 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. Plaintiff is also cautioned that if he intends to appeal, he has not yet filed a notice of appeal in this case.

**IT IS THEREFORE ORDERED THAT** Plaintiff's Petition for Certificate of Appealability (Doc. 15) is **denied**.

**IT IS SO ORDERED.**

**Dated May 6, 2021, in Topeka, Kansas.**

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