IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

RICKY BENSON, Plaintiff, v. WILLIAM BILL OLDHAM ET AL, Defendant.	)	No. 2:17-cv-02749-TLP-tmp JURY DEMAND

ORDER DENYING PLAINTIFF'S MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Plaintiff Ricky Benson, an inmate confined in Shelby County Jail, filed a pro-se Complaint against Defendants under 42 U.S.C. § 1983 accompanied with a Motion for Leave to Proceed in forma pauperis. (ECF Nos. 1–2.) For the following reasons, the Court denies Plaintiff's Motion to Proceed in forma pauperis and directs Plaintiff to pay the applicable filing fees within thirty (30) days of this Order.

BACKGROUND

Plaintiff alleges claims against numerous parties based on his imprisonment in Shelby County Jail. He sues prison officials, clerks, medical providers, and food service companies. (ECF No. 1 at PageID 1.) Specifically, Plaintiff alleges the following—(1) that Defendants Sheriff William Bill Oldham and Chief Jailer Robert Moore are conspiring with their subordinates to obstruct Plaintiff's access to the courts, (2) that prison officials turned off the plumbing in Plaintiff's cell, (3) that prison officials either condoned or facilitated other inmates throwing urine and feces into Plaintiff's cell, (4) that prison officials failed to provide

Plaintiff adequate medical care on an unspecified injury that Plaintiff allegedly received, (5) that prison officials conspired with inmates to kill Plaintiff, (6) that prison officials conspired with inmates to deprive Plaintiff of his prescription medicine, (7) that prison officials conspired with inmates to sexually assault Plaintiff, (8) that prison officials conspired with inmates and Defendant Aramark Food Services to either deprive Plaintiff of food or poison his food, (9) that prison officials assaulted Plaintiff, (10) that prison officials generally harassed and threatened Plaintiff, and (11) that Defendant Thomas M. Gould, Clerk for the Western District of Tennessee, is obstructing Plaintiff's access to the court in various ways. (ECF No. 1 at PageID 5–13.) Plaintiff requests compensatory damages for each of these violations. (Id.)

STANDARD OF REVIEW

Generally, any person who files a civil action in federal court must pay the applicable filing fees. *See* 28 U.S.C. § 1914(a). But a prisoner may avoid prepaying these fees by moving to proceed in forma pauperis. *See Timmons v. Shelby Cnty.*, 2013 WL 12131325, at *1–2 (W.D. Tenn. 2013). To proceed in forma pauperis is to proceed "without prepayment of fees or security therefor, by a person that . . . is unable to pay [them] . . . ." 28 U.S.C. § 1915(a)(1). That being said, § 1915(a)(1) merely provides the prisoner the opportunity to make an initial down payment on the filing fee and pay the remainder in installments. *See Timmons*, 2013 WL at *2 ("When an inmate seeks pauper status, the only issue is whether the inmate pays the entire fee at the initiation of the proceeding or over a period of time under an installment plan. Prisoners are no longer entitled to a waiver of fees and costs.") (quoting *McGore v. Wrigglesworth*, 114 F.3d 601, 604 (6th Cir. 1997)) *partially overruled on other grounds by LaFountain v. Harry*, 716 F.3d 944, 951 (6th Cir. 2013).

Some prisoners, however, cannot proceed in forma pauperis. According to the "three-strike rule" in 28 U.S.C. § 1915(g):

> In no event shall a prisoner bring a civil action or 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.

§ 1915(g).

Because Plaintiff falls under § 1915(g)'s three-strike rule the Court will only allow him to proceed in forma pauperis if he is in "imminent danger of serious physical injury."[1] § 1915(g).

The imminent danger exception "is essentially a pleading requirement subject to the ordinary principles of notice pleading" and, in pro-se matters like this, those requirements are liberally construed. *Vandiver v. Vasbinder*, 416 Fed. App'x 560, 562 (6th Cir. 2011). Specifically, Plaintiff "need[ ] only to assert allegations of imminent danger, he need not affirmatively prove those allegations at this state of litigation." *Tucker v. Pentrich*, 483 Fed. App'x 28, 30 (6th Cir. 2012) (internal quotations omitted). Plaintiff "must therefore show that his complaint alleged facts from which a court, informed by its judicial experience and common sense, could draw the reasonable inference that [Plaintiff] was under an existing danger at the time he filed his [C]omplaint." *Taylor v. First Med. Mgmt.*, 508 Fed. App'x 488, 492 (6th Cir. 2012). That being said, a court "may deny a prisoner leave to proceed

[1] *See Benson v. Luttrell, et al.*, No. 08-2825-JPM-dkv (W.D. Tenn. Jan. 9, 2009) (dismissed for failure to state a claim), *aff'd*, No. 09-5145 (6th Cir. Nov. 4, 2009); *Benson v. Luttrell, et al.*, No. 07-2790-SHM (W.D. Tenn. Sept. 11, 2008) (dismissed for failure to state a claim), *appeal dismissed*, No. 08-6277 (6th Cir. July 20, 2009), *cert. denied*, 130 S. Ct. 411 (2009); and *Benson v. Luttrell, et al.*, No. 04-2507-JPM-tmp (W.D. Tenn. Oct. 26, 2004) (dismissed for failure to state a claim).

pursuant to § 1915(g) when the prisoner's claims of imminent danger are conclusory or ridiculous, or are clearly baseless (i.e., are fantastic or delusional and rise to the level of irrational or wholly incredible." *Rittner v. Kinder*, 290 Fed. App'x 796, 798 (6th Cir. 2008) (internal citations omitted); *Taylor*, 508 Fed. App'x at 492.

DISCUSSION

A. Plaintiff's Complaint Does Not Fall Under § 1915(g)'s Imminent-Danger Exception.

A court goes claim-by-claim when analyzing whether a complaint satisfies § 1915(g)'s imminent-danger exception. *See* Order Vacating Orders Entered April 22, 2010 at 2–3, Farnsworth v. Hodge, No. 10-1095 (W.D. Tenn. Mar. 29, 2012), ECF No. 26. Each of Plaintiff's eleven claims, then, will be reviewed on their own merits.

Most of Plaintiff's claims fail under the imminent-danger exception simply because they are not, for lack of a better word, imminent. Except for Plaintiff's first and eleventh claims, which allege obstruction from access to the courts, every claim concerns past behavior.[2] Plaintiff filed his Complaint on October 11, 2017. (ECF No. 1.) Other than Plaintiff's first and eleventh claims, in every other claim he complains about behavior that allegedly occurred from July through September of 2017. As a result, these claims cannot satisfy the imminent-danger exception because past behavior cannot be imminent. *See Vandiver*, 727 F.3d at 585; *Percival v. Gerth*, 443 Fed. App'x 944, 946 (6th Cir. 2011).

For example, Plaintiff alleges that prison officials generally harassed and threatened Plaintiff. (ECF No. 1 at PageID 9–10.) In one instance, Plaintiff alleges that a prison official

[2] The Court defines each claim (e.g., Plaintiff's first and eleventh claims) according to its own listing. *See supra* Background. Plaintiff lists out ten claims in his Complaint. (ECF No. 1 at PageID 4.) But Plaintiff's claims are difficult to discern—sometimes reiterating prior allegations or asserting two separate allegations in a single claim. Thus, for clarity's sake, the Court holds to its own listing, totaling eleven separate claims. *See supra* Background.

threatened to cut Plaintiff's throat before he filed his Complaint. (*Id.*) If these sorts of threats were ongoing at the time Plaintiff filed his Complaint, the Court may surely determine that these threats posed an "imminent danger of serious physical injury." § 1915(g). But here Plaintiff asserts that this alleged behavior occurred in August 2017—more than a month before he filed his Complaint. (*Id.*) Thus, this claim fails under the imminent-danger exception.

Furthermore, Plaintiff's first and eleventh claims about access to the courts also fail because they do not allege a threat of serious bodily harm. Obstructing one's access to the courts is obviously a serious allegation. But it is not one that concerns *physical* harm. Because the imminent-danger exception requires "physical injury" these claims necessarily fail under it. § 1915(g).[3]

CONCLUSION

Plaintiff's Motion for Leave to Proceed in forma pauperis is DENIED. Plaintiff must remit the entire $400 filing fee within thirty (30) days or his claim will be dismissed without prejudice.

Furthermore, the Court's ruling on this Motion flows to all subsequent motions that Plaintiff filed. Plaintiff filed numerous crossclaims and motions to amend. (ECF Nos. 6–7,

[3] Some of Plaintiff's claims also fail under the imminent-danger exception for other reasons. For example, Plaintiff's eighth claim—that prison officials conspired with inmates and Defendant Aramark Food Services to either deprive Plaintiff of food or poison his food—fails because it alleges past behavior. But, it also fails because it is ridiculous. As noted in *Taylor*, "[a]llegations that are conclusory, ridiculous, or clearly baseless are also insufficient for purposes of the imminent-danger exception." *Taylor*, 508 Fed. App'x at 492. Here, allegations that officials or an outside food vendor are poisoning a prisoner's daily rations are so far afield that the Court cannot sustain them as plausible. It is simply ridiculous for a prisoner to accuse an outside food contractor to be in cahoots with prison officials to poison that prisoner's food.

9–10, 12, 14, 19, 22, 24–25, 29, 32, 34, 38, 43, 51–55.) He also filed motions for a speedy preliminary injunction/restraining order, enjoinment, speedy trial, copies of documents, intervention, appointment of counsel, recusal, writ of habeas corpus, and transfer. (ECF Nos. 3, 13, 21, 23, 26, 28–31, 36, 40, 42, 44–45, 47–48, 50, 56.) Until Plaintiff pays the applicable filing fee, these motions are premature. They are thus DENIED without prejudice. Plaintiff is also PROHIBITED from filing further motions and documents in this action until the filing fee is remitted in full. The Clerk is directed to file no further motions or documents in this action until the full filing fee is received.

SO ORDERED, this 17th day of July, 2018.

s/ Thomas L. Parker
THOMAS L. PARKER
UNITED STATES DISTRICT JUDGE