

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Submitted May 28, 2024*

Decided June 3, 2024

Before

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 23-1901

CHRISTOPHER GILMORE,
Plaintiff-Appellant,

v.

THOMAS DART, et al.,
Defendants-Appellees.

Appeal from the United States District
Court for the Northern District of
Illinois, Eastern Division.

No. 23 C 2135

Jorge L. Alonso,
Judge.

ORDER

If a prisoner has had three or more suits that were dismissed as frivolous, as malicious, or for failure to state a claim, he may not proceed in forma pauperis (IFP)—that is, without prepaying the filing fee—unless he is “under imminent danger of

* The appellees were not served with process and have not participated in this appeal. We have agreed to decide the case without oral argument because the brief and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

serious physical injury.” 28 U.S.C. § 1915(g). Christopher Gilmore, an Illinois state prisoner, has three strikes.[†] He sought to invoke the imminent-danger exception based on his allegations that he was repeatedly denied medical care for a shoulder injury, back pain, and headaches. Because the district court correctly ruled that Gilmore did not sufficiently allege an imminent threat of serious physical injury, we affirm.

According to Gilmore, whose allegations we take as true at this stage, *Wallace v. Baldwin*, 895 F.3d 481, 483 (7th Cir. 2018), he was injured in February 2023 while being transported by van to a court appearance. An abrupt turn by the driver threw him off his seat across the van, causing a dislocated shoulder and back injuries. He was denied immediate medical care but several hours later was taken to the medical center, where doctors took x-rays and gave him painkillers. After the painkillers wore off, Gilmore says he experienced headaches, back pain, and shoulder aches. Beginning in February 2023, he requested medical care “numerous” times, and in the following months he dislocated his shoulder twice more.

In April 2023, Gilmore filed a pro se complaint accompanied by a request to proceed in forma pauperis, alleging constitutional claims relating to the transport incident and the ongoing denial of medical care. The district court denied the request, stating that Gilmore had incurred three strikes under the Prison Litigation Reform Act, 28 U.S.C. § 1915(g), and that his allegations of persistent pain did not rise to an imminent threat of serious physical injury.

On appeal, Gilmore maintains that he should be allowed to proceed IFP because he alleged that he is in imminent danger of serious physical harm. He asserts that he requested and was denied medical care “numerous” times for his pain over the course of a year. (He also notes that he received an MRI in March 2024 and has been scheduled for shoulder surgery.)

[†] Gilmore has received strikes for three cases in our circuit: *Gilmore v. Chi. Police Dep’t, et al.*, No. 21-C-4629 (N.D. Ill.); *Gilmore v. Sheenen*, 2013 WL 949471 (N.D. Ill. Mar. 8, 2013); and *Gilmore v. Downey*, 2013 WL 6489971 (N.D. Ill. Dec. 10, 2013). One of Gilmore’s strikes stemmed from a dismissal based on the doctrine of *Heck v. Humphrey*, 512 U.S. 477, 487 (1994). *Sheenen*, 2013 WL 949471, at *2. An appeal by a different plaintiff is pending in this court raising the question of whether a complaint dismissed as *Heck*-barred qualifies for a strike under 28 U.S.C. § 1915(g), *Holmes v. Marion County*, No. 22-3032.

We review the district court's interpretation of the three-strikes provision de novo. *Wallace*, 895 F.3d at 483. The imminent-danger exception requires the prisoner to make a "plausible allegation" of serious, imminent physical harm, *Sanders v. Melvin*, 873 F.3d 957, 961 (7th Cir. 2017), as evaluated at the time of filing, *Fletcher v. Menard Corr. Ctr.*, 623 F.3d 1171, 1174–75 (7th Cir. 2010).

Gilmore's allegations of injuries and lack of treatment do not rise to the level of an imminent danger. The injuries he sustained from the transportation incident are a past harm. Past harms do not suffice for the imminent-danger exception, which is available only for "genuine emergencies" where "time is pressing" and the threat is "real and proximate." *Heimermann v. Litscher*, 337 F.3d 781, 782 (7th Cir. 2003) (citation omitted). And while the denial of medical care can be an imminent danger, see *Ciarpaglini v. Saini*, 352 F.3d 328, 330 (7th Cir. 2003); *Fletcher*, 623 F.3d at 1173, Gilmore has not alleged that the denial of any care created harm that was imminent. He takes issue with the type of care he received—allegedly a sling, pain medications, and physical therapy—and delays in receiving his requested care. But not receiving the exact type of medical care he sought on the timeline he requested, without more, does not raise an imminent threat of serious physical harm.

AFFIRMED