

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

KENNETH MCDAVID,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 1:15-cv-001086-TWP-TAB
)	
BUTCH BAKER, HENRY COUNTY)	
SHERIFF, et al.,)	
)	
Defendants.)	

**Entry Rescinding *In Forma Pauperis* Status and
Directing Further Proceedings**

I.

The plaintiff, Kenneth McDavid, brought this action on July 10, 2015, and sought leave to proceed *in forma pauperis*. Mr. McDavid’s request was granted on August 5, 2015, and an initial partial filing fee was assessed, which the plaintiff has failed to pay. Upon further review, the Court finds that is must **RESCIND** the order granting the motion to proceed *in forma pauperis*, because Mr. McDavid status is such that he is not eligible to proceed *in forma pauperis* under the circumstances of this case. Mr. McDavid’s status, established by 28 U.S.C. § 1915(g) and his previous history of frivolous litigation brought in federal court, is a barrier to *in forma pauperis* status. The Entry Assessing Initial Partial Filing Fee (Dkt. No. 8) which granted *in forma pauperis* status is therefore **RESCINDED**.

II.

To elaborate on the foregoing ruling, Mr. McDavid is a prisoner who has filed at least three suits or appeals which have been dismissed as frivolous, malicious, or for failure to state a claim. This renders him ineligible to proceed *in forma pauperis* by 28 U.S.C. § 1915(g). In *Evans v.*

Illinois Department of Corrections, 150 F.3d 810 (7th Cir. 1998), it was noted that a prisoner-litigant in these circumstances is entitled to know the cases the Court relies on when making the three-strikes determination. For Mr. McDavid's reference, the cases on which the Court relies in finding three or more "strikes" consist of the following:

McDavid v. Buss, et al., 1:08-cv-1613-DFH-DML (S.D.Ind. May 26, 2009) (dismissed for failure to state a claim under 28 U.S.C. § 1915A);
McDavid v. Baker, et al., 2:14-cv-0264-JMS-WGH (S.D. Ind. Oct. 30, 2014))(dismissed for failure to state a claim under 28 U.S.C. § 1915A); and
McDavid v. Corizon, Inc., et al., 2:14-cv-0272-JMS-WGH (S.D. Ind. Dec. 10, 2014))(dismissed for failure to state a claim under 28 U.S.C. § 1915A).

The narrow exception to the barrier created by § 1915(g)Bwhere a prisoner alleges that he "is under imminent danger of serious physical injury"Bdoes not apply to the claims or allegations in the complaint. In this case, Mr. McDavid alleges that when he was booked in at the Henry County Jail, his personal property was taken and inventoried. Mr. McDavid alleges that the property was not returned to him and he was not properly compensated for it. Accordingly, this claim does not fit within the exception.

III.

Mr. Turner shall have **through October 27, 2015**, in which to pay the \$400.00 filing fee for this civil action. Failure to do so will result in dismissal of this action.

IT IS SO ORDERED.

Date: 10/5/2015



TANYA WALTON PRATT, JUDGE
United States District Court
Southern District of Indiana

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