

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

EUGENE LONG,

Plaintiff,

v.

Case No. 3:17-cv-862-J-39JBT

STEVEN P. ESPOSITO and
J. WILBURN,

Defendants.

ORDER OF DISMISSAL WITHOUT PREJUDICE

Plaintiff Eugene Long, an inmate of the Florida penal system who is proceeding pro se, initiated this action by filing a civil rights Complaint (Doc. 1) and an Amended Complaint (Doc. 6). He names as Defendants Captain Steven P. Esposito and Sergeant J. Wilburn and complains of actions that occurred while he was housed at Columbia Correctional Institution. Amended Complaint at 6. Plaintiff is currently housed at Santa Rosa Annex Correctional Institution.¹ Plaintiff asserts Defendants failed to protect him, in violation of the Eighth Amendment, after he requested protection from another inmate. Id. at 5, 7. He also alleges violation of his due process rights under the Fourteenth Amendment. Id. at 6.

The Prison Litigation Reform Act (PLRA) amended 28 U.S.C. § 1915 by adding the following subsection:

(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

¹ See Corrections Offender Network, Florida Department of Corrections, available at <http://www.dc.state.fl.us/AppCommon/> (last visited Apr. 3, 2018).

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). Section 1915(g), commonly referred to as the “three strikes” provision, requires this Court to consider prisoner actions dismissed before, as well as after, the enactment of the PLRA.

This Court takes judicial notice of filings previously brought by Plaintiff in this Court that were dismissed on the grounds that they were frivolous, malicious, or failed to state a claim upon which relief may be granted: (1) Case No. 3:10cv356/LC/CJK (failure to state a claim); (2) Case No. 3:10cv365/RV/EMT (malicious: failure to disclose prior civil cases); (3) Case No. 3:10cv428/LAC/EMT (malicious: failure to disclose prior civil cases); and (4) Case No. 3:10cv429/MCR/MD (failure to state claim). Of significance, Plaintiff fails in both his Complaint and Amended Complaint to respond to whether he filed previous lawsuits that were dismissed as frivolous, malicious, or for failure to state a claim (Docs. 1, 6).

Because Plaintiff has had three or more prior qualifying dismissals and is not under imminent danger of serious physical injury,² this action will be dismissed without

² Plaintiff alleges he fears another inmate who had been threatening him. He also alleges that the threatening inmate's friend had been placed in his cell and had threatened to physically assault or rape Plaintiff. See Amended Complaint at 33. As noted previously in this Order, Plaintiff has been transferred to Santa Rosa Annex Correctional Institution. He complains of threats and actions that occurred while he was housed at Columbia Correctional Institution. Thus, any alleged threat of harm no longer exists, and threats of past harm are insufficient to satisfy the “imminent danger” exception. See *Medberry v. Butler*, 185 F.3d 1189, 1193 (11th Cir.1999) (holding allegations of past harm do not demonstrate imminent danger); see also *O'Connor v. Suwannee Corr. Inst.*, 649 F. App'x 802, 805 (11th Cir. 2016) (holding plaintiff's allegations that he received threats failed to meet the exception because the plaintiff had been transferred to a different correctional facility).

prejudice. Plaintiff may initiate a new civil rights action by filing a new civil rights complaint form and paying \$400.00 (\$350.00 filing fee and \$50.00 administrative fee).

Accordingly, it is now

ORDERED AND ADJUDGED:

1. This case is hereby **DISMISSED without prejudice**.
2. The **Clerk** shall enter judgment dismissing this case without prejudice, terminate any pending motions, and close this case.
3. The **Clerk** shall update Plaintiff's mailing address to Santa Rosa Annex Correctional Institution, 5850 East Milton Road, Milton, Florida 32583-7914.

DONE AND ORDERED at Jacksonville, Florida, this 4th day of April, 2018.



BRIAN J. DAVIS
United States District Judge

Jax-6
c:
Eugene Long, #J09655