

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

KEVIN O. GRAHAM,

Plaintiff,

v.

Case No.: 2:24-cv-1112-SPC-KCD

BRUCE KYLE and 20TH
JUDICIAL CIRCUIT COURT, LEE
COUNTY, FL,

Defendants.

_____ /

OPINION AND ORDER

Before the Court is *pro se* Plaintiff Kevin O. Graham’s Complaint. (Doc. 1). Graham—a prisoner of the Florida Department of Corrections—moves for leave to proceed *in forma pauperis*. (Doc. 2). Because Graham is barred from doing so under 28 U.S.C. § 1915(g), the Court dismisses this action without prejudice.

Under § 1915(g), a prisoner cannot proceed *in forma pauperis* if “on 3 or more prior occasions, while incarcerated or detained in any facility, [he] brought an action or appeal in a [federal] court...that was dismissed on the grounds that it is frivolous, malicious, or fails to state claim upon which relief may be granted[.]” 28 U.S.C. § 1915(g); see *Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721, 1723 (2020) (“To help staunch a ‘flood of nonmeritorious’ prisoner

litigation, the Prison Litigation Reform Act of 1995 (PLRA) established what has become known as the three-strikes rule.” (citation omitted)). And “[a] dismissal of a suit for failure to state a claim counts as a strike, whether or not with prejudice.” *Lomax*, 140 S. Ct. at 1727.

The Court takes judicial notice of three prior federal lawsuits Graham filed in this district, all of which were filed before this case and dismissed for failing to state a claim upon which relief may be granted: Cases Nos. (1) 2:24-cv-230-JLB-NPM; (2) 2:24-cv-834-JLB-KCD; and (3) 2:24-cv-626-SPC-NPM. Graham is not exempt from § 1915(g)’s three-strikes rule, as the Complaint does not allege he is in imminent danger of serious physical injury. *Mitchell v. Nobles*, 873 F. 3d 869, 872 (11th Cir. 2017).

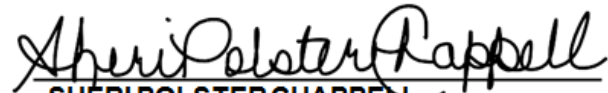
The Court thus dismisses the Complaint without prejudice. If Kevin O. Graham’s wishes to pursue his claim(s), he must file a new complaint—under a new case number—and pay the \$402.00 filing fee.

Accordingly, it is

ORDERED:

1. Kevin O. Graham’s Complaint (Doc. 1) is **DISMISSED without prejudice** under 28 U.S.C. § 1915(g).
2. The Clerk is **DIRECTED** to enter judgment, terminate any pending motions and deadlines, and close this file.

DONE and **ORDERED** in Fort Myers, Florida on December 10, 2024.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

SA: FTMP-1

Copies: All Parties of Record