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Williams v. Forte

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 04-2071

ANTHONY WILLIAMS,

Appellant

v.

LT. FORTE, (SCIP); JOAN A. DELIE, Health Care Administrative (SCIP); JOSEPH GERAGI, Medical Staff (SCIP); DR. GINCHEREAU, Medical Director (SCIP); DIANE MANSON, R.N. Supervisor (SCIP); WILLIAM STICKMAN, Superintendent (SCIP); JOE ECSEDY, C/O I (SCIP); DAVID GOOD, Deputy Superintendent PRC (SCIP); CHARLES J. SIMSOM, Captain (SCIP); THOMAS E. MCCONNELL, Captain (SCIP); BILL CARNUCHE, Counselor (SCIP); MIKE ZAKEN, Unit Manager PRC Member (SCIP); DONALD WILLIASON, Coordinator Diagnostic Classification Bureau of Inmate Services PA Dept. of Corrections; THOMAS JAMES, Grievances and Appeals Officer; H. CLIFFORD O'HARA, Office of Professional Responsibility Director at Dept. of Corrections

On Appeal From the United States District Court
For the Western District of Pennsylvania
(D.C. Civ. No. 04-00012)
District Judge: Honorable Gary L. Lancaster

Submitted Under Third Circuit LAR 34.1(a)
May 26, 2005

Before: NYGAARD, VAN ANTWERPEN AND STAPLETON, CIRCUIT JUDGES

(Filed May 27, 2005)

OPINION

PER CURIAM

Pro se Appellant, Anthony Williams, who has three strikes under the Prison Litigation Reform Act, moved to proceed *in forma pauperis* in the District Court. The District Court denied his motion pursuant to 28 U.S.C. § 1915(g) and dismissed his complaint for failure to pay the filing fee, approving and adopting the recommendation of a Magistrate Judge, who concluded that Williams did not allege that he was in imminent danger of serious physical injury. Appellant appeals.

The decision of the District Court will be reversed. Williams, who concedes that he has three strikes under the Prison Litigation Reform Act, may not bring a complaint *in forma pauperis* unless he was, at the time that he filed his complaint, under imminent danger of serious physical injury. *See* 28 U.S.C. 1915(g) (2004); *Abdul-Akbar v. McKelvie*, 239 F.3d 307, 313 (3d Cir. 2001) (*en banc*). His allegations of imminent danger must be construed liberally in his favor. *See Gibbs v. Cross*, 160 F.3d 962, 966 (3d Cir. 1998). The Magistrate Judge described Williams' allegations of an injury in August to September 2003 (months before he filed his Complaint in November 2003), his November 2003 report to his counselor of fear for his life about his proposed transfer to a mental hospital, and his complaints about cell assignments, mail issues, and actions

related to his grievances and the potential transfer. *See* Report & Recommendation at 5.

In addition to these allegations, at least some of which do not suggest imminent danger of serious physical injury, the Magistrate Judge mentioned but did not explain Williams’ allegations about lack of adequate medical treatment. *See id.* at 2. However, the allegations that were not fully considered are those allegations that indicate that Williams was in imminent danger of serious physical injury at the time he filed his Complaint.

Williams alleged, in a claim that he continues to press on appeal, a lack of medical treatment over time for a terminal disease and a urinary tract infection and/or a sexually transmitted disease that put him in “serious pain” at the time he filed his Complaint and at present. *See* Complaint at ¶¶ 10-18. These allegations satisfy the threshold criterion of the imminent danger exception of 28 U.S.C. § 1915(g). *See Brown v. Johnson*, 387 F.3d 1344, 1350 (11th Cir. 2004); *McAlphin v. Toney*, 281 F.3d 709, 710 (8th Cir. 2002).

Therefore, the District Court’s order will be reversed, Williams will be permitted to proceed *in forma pauperis* in the District Court, and this matter will be remanded for further proceedings. *See Gibbs*, 160 F.3d at 965, 967. *See also Gibbs v. Roman*, 116 F.3d 83, 86-7 (3d Cir. 1997), *overruled on other grounds by Abdul-Akbar v. McKelvie*, 239 F.3d 307, 311 (3d Cir. 2001) (*en banc*).

