

MAR 20 2015

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TONY FRENCH,

Plaintiff - Appellant,

v.

OREGON STATE PENITENTIARY,

Defendant - Appellee.

No. 14-35271

D.C. No. 6:14-cv-00237-BR

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Anna J. Brown, District Judge, Presiding

Submitted March 10, 2015**

Before: FARRIS, WARDLAW, and PAEZ, Circuit Judges.

Oregon state prisoner Tony French appeals pro se from the district court's order denying his motion to proceed in forma pauperis under 28 U.S.C. § 1915(g) in his 42 U.S.C. § 1983 action alleging defendant failed to protect him from an inmate assault. We have jurisdiction under 28 U.S.C. § 1291. We review de novo

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

the district court's interpretation and application of 28 U.S.C. § 1915(g), *Andrews v. Cervantes*, 493 F.3d 1047, 1052 (9th Cir. 2007), and review for an abuse of discretion its denial of leave to proceed in forma pauperis, *O'Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990). We affirm.

The district court did not abuse its discretion by denying French's motion to proceed in forma pauperis because at least three of French's prior § 1983 actions were dismissed as frivolous or for failure to state a claim, and French did not plausibly allege that he was "under imminent danger of serious physical injury" at the time that he lodged the complaint. 28 U.S.C. § 1915(g); *see also Andrews*, 493 F.3d at 1055 (discussing imminent danger exception to three-strikes rule).

We do not consider the newly raised factual allegations in French's opening brief because they were not presented below. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009) (per curiam).

French's motion to proceed in forma pauperis on appeal, filed on August 8, 2014, is denied as moot.

AFFIRMED.