

JUL 31 2015

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LARRY M. HOAK,

Plaintiff - Appellant,

v.

ATTORNEY GENERAL; et al.,

Defendants - Appellees.

No. 14-35198

D.C. No. 1:12-cv-00550-BLW

MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho
B. Lynn Winmill, Chief Judge, Presiding

Submitted July 21, 2015**

Before: CANBY, BEA, and MURGUIA, Circuit Judges.

Idaho state prisoner Larry M. Hoak appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action for failure to pay the filing fee, after revoking Hoak's in forma pauperis status under 28 U.S.C. § 1915(g). We review de novo the district court's interpretation and application of 28 U.S.C.

* 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).

§ 1915(g), *Andrews v. King*, 398 F.3d 1113, 1118 (9th Cir. 2005), and we vacate and remand.

While the district court properly concluded that three of Hoak’s prior federal actions constituted strikes under § 1915(g), the district court improperly denied Hoak’s request to proceed in forma pauperis because, in Hoak’s response to the district court’s revocation order and Hoak’s motion for reconsideration, Hoak sufficiently demonstrated that he was under “imminent danger of serious physical injury” at the time he lodged the complaint. 28 U.S.C. § 1915(g); *Andrews v. Cervantes*, 493 F.3d 1047, 1055 (9th Cir. 2007) (discussing the imminent danger exception to the three-strikes rule). Therefore, we vacate the denial of Hoak’s request to proceed in forma pauperis and the dismissal of his action for failure to pay the filing fee, and remand for further proceedings.

We reject Hoak’s contentions regarding equitable tolling.

Siegert’s motion for judicial notice, filed on November 25, 2014, is granted.

Hoak’s “motion for the court’s information to review,” filed on June 8, 2015, is denied.

Hoak’s “motion: new information,” filed July 13, 2015, is denied.

VACATED and REMANDED.