

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 20 2017

FOR THE NINTH CIRCUIT

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

DAVID WAYNE WILSON,

Plaintiff-Appellant,

v.

MICHAEL SMITH; et al.,

Defendants-Appellees.

No. 17-15179

D.C. No. 2:16-cv-02091-MCE-
CKD

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Morrison C. England, Jr., District Judge, Presiding

Submitted November 15, 2017**

Before: CANBY, TROTT, and GRABER, Circuit Judges.

California state prisoner David Wayne Wilson 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 the district court denied him leave to proceed in forma pauperis.

We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

court's interpretation and application of 28 U.S.C. § 1915(g), *Andrews v. Cervantes*, 493 F.3d 1047, 1052 (9th Cir. 2007), and 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 Wilson's motion to proceed in forma pauperis because at least three of Wilson's prior federal actions were dismissed for failure to state a claim, and Wilson failed to allege plausibly 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 (an exception to the three-strikes rule exists only where "the complaint makes a plausible allegation that the prisoner faced 'imminent danger of serious physical injury' at the time of filing").

Wilson's motions (Docket Entry Nos. 7, 9 & 11) are denied.

AFFIRMED.