

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 12 2020

FOR THE NINTH CIRCUIT

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

LANCE REBERGER,

Plaintiff-Appellant,

v.

JAMES DZURENDA; et al.,

Defendants-Appellees.

No. 19-15155

D.C. No. 3:17-cv-00552-RCJ-WGC

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada

Robert Clive Jones, District Judge, Presiding

Submitted August 5, 2020**

Before: SCHROEDER, HAWKINS, and LEE, Circuit Judges.

Nevada state prisoner Lance Reberger 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 denying Reberger's application to proceed in forma pauperis ("IFP"). 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 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).

Andrews v. Cervantes, 493 F.3d 1047, 1052 (9th Cir. 2007). We reverse and remand.

The district court denied Reberger’s application to proceed IFP on the basis that Reberger has three prior strikes. *See* 28 U.S.C. § 1915(g). However, Reberger alleged in the complaint that he was under imminent danger of serious physical harm because his prolonged isolation in administrative segregation is causing him physical injuries, he is unable to access his HIV medication as prescribed, and his water is contaminated with chemicals and is undrinkable. These allegations are sufficient to satisfy the “imminent danger” exception. *See Andrews*, 493 F.3d at 1055 (an exception to the three-strikes rule exists where “the complaint makes a plausible allegation that the prisoner faced ‘imminent danger of serious physical injury’ at the time of filing.”). We reverse the judgment and remand for further proceedings.

REVERSED and REMANDED.