

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 27 2021

FOR THE NINTH CIRCUIT

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

IAN LAMONTE CORMIER,

Plaintiff-Appellant,

v.

RIVERSIDE COUNTY DISTRICT
ATTORNEY OFFICE; et al.,

Defendants-Appellees.

No. 19-56269

D.C. No. 5:19-cv-01151-SVW-
AFM

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Stephen V. Wilson, District Judge, Presiding

Submitted January 20, 2021**

Before: McKEOWN, CALLAHAN, and BRESS, Circuit Judges.

California state prisoner Ian LaMonte Cormier 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 Cormier leave to proceed in forma pauperis ("IFP"). 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 IFP, *O'Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990). We affirm.

The district court did not abuse its discretion by denying leave to proceed IFP and properly dismissed Cormier's action after he failed to pay the filing fee because at least three of Cormier's prior federal actions or appeals qualified as "strikes" under the Prison Litigation Reform Act ("PLRA") and Cormier failed to allege that he was "under imminent danger of serious physical injury." 28 U.S.C. § 1915(g) (requiring a prisoner who is otherwise barred from proceeding IFP under the PLRA's "three strikes" provision to show that he faces an imminent danger or pay the filing fee); *Andrews*, 493 F.3d at 1055 (discussing imminent danger exception).

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or documents and facts not presented to the district court. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009); *United States v. Elias*, 921 F.2d 870, 874 (9th Cir. 1990).

The Clerk will provide Cormier with courtesy copies of his filings at Docket Entry Nos. 16, 17, 20. All other pending motions and requests are denied.

AFFIRMED.