

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 27 2021

FOR THE NINTH CIRCUIT

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

GUILLERMO CRUZ TRUJILLO, AKA
Guillermo Trujillo Cruz,

Plaintiff-Appellant,

v.

S. SAVOIE, Correctional Officer,

Defendant-Appellee.

No. 19-17432

D.C. No. 1:19-cv-01024-LJO-JDP

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Lawrence J. O'Neill, District Judge, Presiding

Submitted April 20, 2021**

Before: THOMAS, Chief Judge, TASHIMA and SILVERMAN, Circuit Judges.

California state prisoner Guillermo Cruz Trujillo 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 Trujillo's motion 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). We reverse and remand.

The district court determined that the Prisoner Litigation Reform Act's "three strikes" provision barred Trujillo from proceeding IFP because Trujillo did not plausibly allege that he was "under imminent danger of serious physical injury" at the time he lodged the complaint. 28 U.S.C. § 1915(g). However, a review of the record demonstrates that Trujillo plausibly alleged that he faced imminent danger of serious physical injury from other inmates due to defendant Savoie's allegedly falsified report of Trujillo's sexual misconduct. *See Williams v. Paramo*, 775 F.3d 1182, 1190 (9th Cir. 2015) (court should liberally construe a prisoner's "facial allegations" and determine if the complaint "makes a plausible allegation" of imminent danger); *see also Andrews*, 493 F.3d at 1055 (discussing the imminent danger exception to 28 U.S.C. § 1915(g)).

REVERSED and REMANDED.