

**United States Court of Appeals
FOR THE EIGHTH CIRCUIT**

No. 05-4095

James Michael Wilbourn,

Appellant,

v.

South Dakota State Penitentiary; J. P. Syverson, head nurse, in her individual and official capacity; Rose Garrison, nurse, in her individual and official capacity; Larry Winters, nurse, in his individual and official capacity; Vincent Nesheim, nurse, in his individual and official capacity; Dr. J.H. Schaeffer, in his individual and official capacity; Shawn Newland, unit counselor, in his individual and official capacity; Cliff Fantory, unit manager, in his individual and official capacity; Julie Spurrell, supervisor, in her individual and official capacity,

Appellees.

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* Appeal from the United States
* District Court for the
* District of South Dakota.

[UNPUBLISHED]

Submitted: February 21, 2007
Filed: March 14, 2007

Before RILEY, COLLOTON, and GRUENDER, Circuit Judges.

PER CURIAM.

South Dakota inmate James Wilbourn appeals the district court's¹ preservice dismissal without prejudice of his pro se 42 U.S.C. § 1983 complaint. Additionally, Wilbourn has filed numerous motions requesting appointment of counsel, relief on the merits, and leave to conduct discovery.

In a September 1, 2005 order, the district court dismissed Wilbourn's complaint without prejudice upon (1) determining Wilbourn had "three strikes" under 28 U.S.C. § 1915(g),² was not under imminent danger of serious physical injury, and had not paid the district court filing fee; and (2) opining Wilbourn had failed to state a claim upon which relief may be granted. We affirm the district court's finding Wilbourn had "three-strikes" within the meaning of section 1915(g). See 28 U.S.C. § 1915(g); Martin v. Neb. Dep't of Corr. Servs., No. 00-2551, 2000 WL 1665076, *1 (8th Cir. Nov. 7, 2000) (unpublished per curiam) (affirming district court's "three strikes" finding under § 1915(g)). Because Wilbourn's IFP complaint was not properly before the district court, we decline to address the court's alternative holdings.

The district court's preservice dismissal without prejudice is affirmed, and Wilbourn's pending motions are denied as moot. See 8th Cir. R. 47A(a).

¹The Honorable Richard H. Battey, United States District Judge for the District of South Dakota.

²Section 1915(g) of Title 28, United States Code provides:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.