

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

July 18, 2006

Elisabeth A. Shumaker
Clerk of Court

JEFFREY LEON GARNER,

Plaintiff - Appellant,

v.

MICHAEL A. NELSON, Warden, El
Dorado Correctional Facility; RAY
ROBERTS, Warden, El Dorado
Correctional Facility; STATE OF
KANSAS,

Defendant - Appellee.

No. 06-3075
(D. Kansas)
(D.Ct. No. 05-CV-3040-SAC)

**ORDER DENYING LEAVE TO PROCEED
ON APPEAL *IN FORMA PAUPERIS*,
AND DISMISSING APPEAL**

Before **HENRY, BRISCOE**, and **O'BRIEN**, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Jeffrey Leon Garner is an inmate in the Kansas prison system. He filed a *pro se* 42 U.S.C. § 1983 complaint against two corrections department wardens, Nelson and Roberts, and the State of Kansas alleging violation of his rights under

the Fifth, Eighth and Fourteenth Amendments of the Constitution of the United States due to illegal confinement. He was permitted to proceed *in forma pauperis* in the district court.

The district court screened Garner's complaint as required by statute, 28 U.S.C. § 1915A, and ordered him to show cause why the case should not be dismissed for failing to state a claim for relief under 42 U.S.C. § 1983. The court reviewed Garner's response, and dismissed all claims and defendants other than the claims for damages against defendants Nelson and Roberts in their individual capacity. The court again ordered Garner to show cause why the remaining claims should not also be dismissed. Garner responded with a motion for reconsideration. The court denied Garner's motion for reconsideration and dismissed the remaining counts as failing to state a claim.

In this court Garner seeks leave to proceed *in forma pauperis*. We have reviewed his opening brief and cannot discern a reasoned, non-frivolous argument on the law and facts in support of the issues he proposes to raise. His request is denied and this frivolous appeal is dismissed. 28 U.S.C. § 1915(e)(2)(B).

Garner has accumulated two strikes, one in the district court and one here. 28 U.S.C. § 1915(g); *Jennings v. Natrona County Det. Ctr. Med. Facility*, 175 F.3d 775, 780 (10th Cir. 1999). He is reminded that should he accrue three strikes, he will no longer be permitted to proceed *in forma pauperis* in any civil action filed in a federal court unless he is in imminent danger of physical injury.

28 U.S.C. § 1915(g).

DISMISSED.

Entered by the Court:

Terrence L. O'Brien
United States Circuit Judge