

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-11891
Non-Argument Calendar

DANIEL DUMOND,

Plaintiff-Appellant,

versus

MIAMI DADE POLICE DEPARTMENT KENDALL DISTRICT,
Officers, in their individual and official capacities,
MIAMI DADE POLICE DEPARTMENT MIDDLE EAST
DISTRICT,

Officers, in their individual and official capacities,
MIAMI DADE POLICE DEPARTMENT HEADQUARTERS,
Officers, in their official capacity,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:24-cv-21272-KMM

Before JILL PRYOR, BRASHER, and KIDD, Circuit Judges.

PER CURIAM:

The Prison Litigation Reform Act (“PLRA”) allows indigent prisoners to proceed with a civil action if they partially pre-pay the filing fee. 28 U.S.C. § 1915(a)(1), (b)(1)–(2). However, § 1915(g), which is commonly referred to as the “three strikes” provision, “generally bars a prisoner from proceeding [in forma pauperis (“IFP”)] if he has previously filed three or more meritless lawsuits,” i.e., accumulated three or more “strikes.” *Mitchell v. Nobles*, 873 F.3d 869, 872 (11th Cir. 2017); *see* 28 U.S.C. § 1915(g). Only dismissals of claims as frivolous, malicious, or for failure to state a claim may be counted as strikes. *Daker v. Comm’r, Ga. Dep’t of Corr.*, 820 F.3d 1278, 1283–84 (11th Cir. 2016). “[T]he sole exception to the three strikes bar is where ‘the prisoner is under imminent danger of serious physical injury.’” *Mitchell*, 873 F.3d at 872 (quoting 28 U.S.C. § 1915(g)).

In this case, Florida inmate Daniel Dumond requested IFP status in the district court to pursue a 42 U.S.C. § 1983 action against Miami-Dade County police officers for excessive force and deliberate medical indifference. The district court screened the complaint, *see* 28 U.S.C. § 1915A, and then it dismissed the complaint with prejudice due to Dumond’s previous designation as a three-striker in the Southern District of Florida and his failure to allege imminent danger in the instant case. Dumond now appeals this order, and we review the district court’s dismissal de novo. *Mitchell*, 873 F.3d at 873.

Although the district court did not explain the basis upon which Dumond was previously designated as a three-striker, our independent review of Dumond's litigation history confirms that he has filed at least three prior civil actions while in custody that were dismissed as frivolous, malicious, or for failure to state a claim. See *Dumond v. Mia. Dade Cnty. Dep't of Corr. & Rehab.*, No. 1:21-cv-22917 (S.D. Fla. Aug. 19, 2021) (failure to state a claim); *Dumond v. Mia. Police Dep't*, No. 1:21-cv-22918 (S.D. Fla. Sep. 16, 2021) (failure to state a claim); *Dumond v. Florida*, No. 1:23-cv-22453 (S.D. Fla. July 24, 2023) (frivolous because it contained no identifiable federal cause of action and otherwise failed to allege imminent danger).¹

The remaining question is whether Dumond could overcome the three strikes provision in this case by alleging imminent danger. *Mitchell*, 873 F.3d at 872. The district court concluded that he could not because he complained only of past events. We agree,

¹ Earlier in this appeal, a single judge of this Court concluded that Dumond had only two strikes and allowed him to proceed "as any other prisoner bringing a civil action" without the requirement of showing imminent danger. We note that the district court arguably erred by relying upon *Dumond v. Carrington*, No. 1:22-cv-20339 (S.D. Fla. Apr. 14, 2022), a case primarily dismissed for lack of jurisdiction, in the underlying decision designating Dumond as three-striker. See *Daker*, 820 F.3d at 1284 (explaining that dismissal for lack of jurisdiction, "without more, cannot serve as a strike"). However, our further review of the record at this stage reveals *Dumond v. Florida* as an alternative case to serve as Dumond's third strike, 28 U.S.C. § 1915(g), and the single-judge administrative order issued previously in this appeal is not binding on this merits panel, 11th Cir. R. 27-1(g).

as Dumond’s allegations center around the mental and physical injuries he purportedly suffered because of excessive force used during a September 2020 arrest. These assertions of past danger, without explanation of how these harms create a likelihood of imminent serious physical injury, are insufficient. *See Medberry v. Butler*, 185 F.3d 1189, 1193 (11th Cir. 1999); *see also Brown v. Johnson*, 387 F.3d 1344, 1349–50 (11th Cir. 2004). As such, the district court correctly determined that Dumond’s complaint was due to be dismissed under § 1915(g). However, the court erred in dismissing the complaint with prejudice, as our precedent is clear that dismissal under the three strikes provision should be *without prejudice*. *Dupree v. Palmer*, 284 F.3d 1234, 1236 (11th Cir. 2002). This error requires vacatur of the dismissal order.

Accordingly, we **AFFIRM** the dismissal of Dumond’s complaint, but **VACATE** the order of dismissal and **REMAND** with instructions for the district court to dismiss the complaint without prejudice. We also **DIRECT** this Court’s Clerk’s Office to designate Dumond as a three-striker for all future civil appeals.