

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

ANDRE GERARD LEWIS,
Plaintiff-Appellant,

v.

JOHN STAIGE DAVIS; ROBERT
HIENZMAN, JR.,
Defendants-Appellees.

No. 03-6628

Appeal from the United States District Court
for the Eastern District of Virginia, at Richmond.
Robert E. Payne, District Judge.
(CA-03-322-3)

Submitted: September 10, 2003

Decided: September 30, 2003

Before WILKINSON, WILLIAMS, and MOTZ, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

COUNSEL

Andre Gerard Lewis, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit. See
Local Rule 36(c).

OPINION

PER CURIAM:

Andre Gerard Lewis, a Virginia prisoner, appeals the district court's order denying his motion to proceed in forma pauperis in his 42 U.S.C. § 1983 (2000) action.

Under the Prison Litigation Reform Act, Pub. L. No. 104-134, 110 Stat. 1321 (1996) (PLRA), a prisoner who has had three or more actions or appeals dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted, may not proceed without prepayment of fees unless he is under imminent danger of serious physical injury. 28 U.S.C. § 1915(g) (2000). The district court, in rejecting Lewis's motion to proceed under the PLRA, determined Lewis previously had at least three actions or appeals dismissed as frivolous or for failing to state a claim. Two of the actions relied upon by the district court were § 1983 complaints that were in fact dismissed by the district court for failure to state a claim. *See Lewis v. Angelone*, No. CV-02-317 (E.D. Va. Nov. 5, 2002); *Lewis v. Angelone*, No. CV-00-161 (E.D. Va. May 16, 2001). However, the other two actions the district court cited were not qualifying dismissals. *See In re Lewis*, No. 02-7275, 2002 WL 31430531 (4th Cir. Oct. 31, 2002) (unpublished); *In re Lewis*, No. 01-7795, 2002 WL 214558 (4th Cir. Feb. 12, 2002) (unpublished).

Accordingly, we vacate the district court's order and remand with instructions that Lewis be permitted to proceed with his action under the PLRA. We dispense with oral argument because the facts and legal contentions of the parties are adequately presented in the materials before the Court and argument would not aid the decisional process.

VACATED AND REMANDED