

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

July 2, 2021

Christopher M. Wolpert
Clerk of Court

JABARI J. JOHNSON,

Plaintiff - Appellant,

v.

DONALD NUNEZ; JAMES JOHNSON;
STEPHANIE DALTON; THOMAS
LITTLE,

Defendants - Appellees.

No. 21-1108
(D.C. No. 1:21-CV-00730-LTB)
(D. Colo.)

ORDER AND JUDGMENT*

Before **HOLMES**, **KELLY**, and **McHUGH**, Circuit Judges.**

Jabari J. Johnson, a Colorado prisoner proceeding pro se, appeals from the district court's dismissal of his lawsuit for failure to comply with previously imposed filing restrictions. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

As a different panel of this court noted in a recent order affirming the dismissal of substantially similar claims, Mr. Johnson has filed more than 100

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

** After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in 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.

lawsuits in the district court and more than 30 appeals in this court. See Johnson v. Little, Nos. 20-1335, 20-1370, No-1389, 2021 WL 1561337, at *1, *5 (10th Cir. Apr. 21, 2021). Those actions involved claims that, among other things, prison officials deprived Mr. Johnson of a medically necessary wheelchair, thereby forcing him to “scoot and crawl on the floor.” Id. at *2–3.

Mr. Johnson has renewed this claim in the instant lawsuit, contending that prison officials have deprived him of a medically necessary wheelchair, denied him access to an ADA-mandated shower cell, limited his access to law library materials, and told other inmates that Mr. Johnson was “a child molester and snitch,” thereby endangering his safety. 1 R. 7. The district court dismissed the lawsuit on the basis that Mr. Johnson failed to comply with filing restrictions the court imposed in March 2020 due to Mr. Johnson’s abusive litigation. Johnson v. Nunez, No. 21-cv-00730-GPG, ECF No. 3 (D. Colo. Mar. 15, 2021) (unpublished); see also Johnson v. Hawkins, No. 19-cv-03730-LTB, ECF No. 3 at 10–11 (D. Colo. Mar. 4, 2020) (unpublished) (setting out restrictions).

“We review for an abuse of discretion the district court’s decision to impose the sanction of dismissal for failure to follow court orders and rules.” Gripe v. City of Enid, 312 F.3d 1184, 1188 (10th Cir. 2002).

The district court did not abuse its discretion in dismissing Mr. Johnson’s claims for failure to comply with the filing restrictions. Mr. Johnson has received ample notice of the filing restrictions against him, which include requirements that before filing any action he (1) either prepay the filing fee or receive approval from

the district court to proceed IFP and (2) provide a notarized affidavit that the lawsuit was not instituted to harass defendants. Johnson, No. 19-cv-03730-LTB, ECF No. 3 at 10–11. As the district court noted, Mr. Johnson did not comply with these requirements. The district court therefore acted well within its discretion in dismissing the complaint.

The district court also denied Mr. Johnson leave to proceed IFP on appeal. Because at least three of Mr. Johnson’s prior suits have been dismissed as frivolous, he must either prepay costs and fees or demonstrate that he “is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). On April 5, 2021, this court directed Mr. Johnson to show cause why he should not be required to prepay the entire filing fee. On May 26, 2021, Mr. Johnson moved for leave to proceed IFP in this court, arguing that he is under imminent danger of serious injury because he has been denied a doctor-mandated wheelchair and because his lack of access to ADA shower cells has caused open sores on his body.

This court has recognized that the failure to provide a prisoner with a medically necessary wheelchair satisfies the imminent danger exception to the prepayment requirement under the PLRA. Fuller v. Wilcox, 288 F. App’x 509, 511 (10th Cir. 2008) (unpublished). However, that exception does not relieve Mr. Johnson of his obligation to provide a coherent and rational argument as to why the district court erred in dismissing the complaint. Mr. Johnson concedes that he did not comply with the filing restrictions imposed by the district court. As discussed above, this failure justified the district court’s dismissal. Accordingly, we deny his

motion to proceed IFP and direct Mr. Johnson to pay the full filing fee. We also remind Mr. Johnson of this court's admonition that future appeals from district court cases in which he has made no demonstrable attempt to comply with district court filing restrictions may result in sanctions from this court. See id. at *5.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 21-cv-00730-GPG

JABARI J. JOHNSON,

Plaintiff,

v.

DONALD NUNEZ,
JAMES JOHNSON,
STEPHANIE DALTON, and
THOMAS LITTLE,

Defendants.

ORDER DISMISSING CASE

Plaintiff Jabari J. Johnson is in the custody of the Colorado Department of Corrections and currently is incarcerated at the Colorado State Penitentiary in Cañon City, Colorado. Plaintiff has filed *pro se* a Prisoner Complaint, ECF No. 1.

This Court has imposed filing restrictions against Plaintiff based on his abusive litigation in this Court. The filing restrictions are as follows:

(1) To initiate an action Plaintiff/Applicant must properly complete a Court-approved prisoner complaint/habeas corpus application form by completing all sections of the form pursuant to the form instructions, which is not limited to but includes writing legibly, listing only one defendant per line in the caption of the form, and providing all named defendants in the information required in Section E. of the complaint form for each separate case he has filed in this Court;

2) To initiate an action Plaintiff/Applicant must at the same time he submits a prisoner complaint/habeas corpus application either pay the required filing fee, or in the alternative submit a request to proceed

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pursuant to 28 U.S.C. § 1915 on a form that is approved by this Court and applicable to the action being filed, and attach a certified inmate account statement and authorization for disbursement as required; and

3) To initiate an action Plaintiff must provide a notarized affidavit that certifies the lawsuit is not interposed for any improper purpose to harass or cause unnecessary delay, and that the filing complies with this injunction, Fed. R. Civ. P. 8, all other provisions of the Federal Rules of Civil [Procedure], and the Local Rules of Practice of the United States District Court for the District of Colorado.

Johnson v. Hawkins, et al., No. 19-cv-03730-LTB, ECF No. 3 at 10-11 (D. Colo. Mar. 4, 2020).

Plaintiff has failed to attest in any format, with or without notarization, that “the lawsuit is not interposed for any improper purpose to harass or cause unnecessary delay, and that the filing complies with this injunction, Fed. R. Civ. P. 8, all other provisions of the Federal Rules of Civil [Procedure], and the Local Rules of Practice of the United States District Court for the District of Colorado.” Plaintiff also has failed to submit a Prisoner’s Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 and attach a certified account statement to the § 1915 Motion for the six months immediately preceding the filing of this action, in the alternative pay the \$402 filing fee in full and to properly complete a Prisoner Complaint form. Plaintiff contends, however, that the “mailroom” only allows him to submit eight pages per envelope to send out.

Nonetheless, even if Plaintiff has been limited on the number of pages he can send out per envelope, he still has failed to comply with the filing restrictions set forth in Case No. 19-cv-03730-LTB. Plaintiff has failed to assert claims that comply with Rule 8 of the Federal Rules of Civil Procedure. Accordingly, it is

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ORDERED that the Clerk of the Court is directed to terminate this case and close the action because Plaintiff has failed to comply with the sanction order entered in *Johnson v. Hawkins, et al.*, No. 19-cv-03730-LTB, ECF No. 10 (D. Colo. Mar. 4, 2020). It is

FURTHER ORDERED that pursuant to 28 U.S.C. § 1915(a)(3) any appeal from this Order is not taken in good faith, and, therefore, *in forma pauperis* status is denied for the purpose of appeal. See *Coppedge v. United States*, 369 U.S. 438 (1962). If Plaintiff files a notice of appeal, he must pay the full \$505 appellate filing fee or file a motion to proceed *in forma pauperis* in the United States Court of Appeals for the Tenth Circuit within thirty days in accordance with Fed. R. App. P. 24.

DATED at Denver, Colorado, this 15th day of March, 2021.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, Senior Judge
United States District Court

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