IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 21-cv-01037-GPG

JABARI J. JOHNSON,

Plaintiff,

v.

JAMES JOHNSON.
CRUZ,
MODLIN, and
CARILLO,[1]

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 initiated this action by filing a Prisoner Complaint, ECF No. 1, and a pleading titled in part as a, "Motion in Compliance of Court Order to Proceed," ECF No. 2.

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-

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[1]##Plaintiff has named at least thirty defendants in this action. The caption in this Order only lists four of the named defendants, which Plaintiff identified in the caption page of the Prisoner Complaint. Because the action will be dismissed sua sponte for failure to comply with filing restrictions, the numerous other named defendants are not included in the caption of the dismissal order.
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> 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;
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> 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 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
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> 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 comply with his filing restrictions. He has not submitted a 28 U.S.C. § 1915 Motion and Affidavit and attach a certified account statement to the Motion for the six months immediately preceding the filing of this action, or in the alternative pay the filing fee in full. He also has failed to properly complete a Prisoner Complaint form. Plaintiff, however, contends that Law Librarian Hansen has denied him a certified six-month account statement, a list of the cases he has filed, and notarization of his compliance statement. *See* ECF No. 2. Nonetheless, the Complaint and action will be dismissed without prejudice because 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. It is

FURTHER ORDERED that all pending motions are denied as moot.

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

BY THE COURT:

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

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/s/

FILED
United States Court of Appeal
Tenth Circuit

October 6, 2021

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

JABARI J. JOHNSON,

Plaintiff - Appellant,

v.

JAMES JOHNSON; CRUZ; MODLIN; CARILLO,

Defendants - Appellees.

No. 21-1152
(D.C. No. 1:21-CV-01037-LTB)
(D. Colo.)

ORDER AND JUDGMENT*

Before **BACHARACH**, **MURPHY**, and **CARSON**, Circuit Judges.

Plaintiff Jabari J. Johnson, appearing pro se, appeals the district court's dismissal of his most recent civil rights complaint. Over the past few years, Plaintiff has filed over 100 actions. Plaintiff also has three strikes under the Prison Litigation Reform Act ("PLRA"), 28 U.S.C. § 1915(g), and thus faces district-court filing

* 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. 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.

restrictions.[1, 2] Plaintiff disregarded those filing restrictions here, and the district court dismissed his action without prejudice for failure to comply with them. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm. Further, we now impose our own filing restrictions.

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[1] See Johnson v. Hill, et al., No. 20-cv-00188 (D. Colo. March 6, 2020); Johnson v. Hampton, No. 20-cv-00161 (D. Colo. Mar. 6, 2020); Johnson v. Ponce, No. 20-cv-00014 (D. Colo. Mar. 4, 2020); Johnson v. Allen, et al., No. 17-cv-2793 (D. Colo. Mar. 20, 2018).

[2] The district court imposed the following restrictions in Johnson v. Little:

> 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;
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> 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 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
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> 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. Little, No. 20-CV-02613-GPG, 2020 WL 5887449, at *1 (D. Colo. Sept. 15, 2020), aff'd, No. 20-1355, 2021 WL 1561337 (10th Cir. Apr. 21, 2021) (unpublished) (citing 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 the district court's dismissal of an action "for failure to follow court orders and rules" for abuse of discretion. Gripe v. City of Enid, 312 F.3d 1184, 1188 (10th Cir. 2002).

Plaintiff alleged four violations of his constitutional rights under § 1983 in the complaint underlying this appeal.[3] But the district court dismissed his complaint without prejudice for failure to comply with his filing restrictions because he did not submit a 28 U.S.C. § 1915 motion and affidavit with his six-month certified account statement or pay the district-court filing fee. He also did not properly complete the Prisoner Complaint Form. Plaintiff contended that "Law Librarian Hansen . . . denied him a certified six-month account statement, a list of the cases he . . . filed, and notarization of his compliance statement." But the district court dismissed his complaint anyway because he failed to assert claims that complied with Federal Rule of Civil Procedure 8. By the same order dismissing Plaintiff's complaint for failure to comply with his filing restrictions, the district court denied Plaintiff *in forma pauperis* ("IFP") status on appeal. Under 28 U.S.C. § 1915(a)(3), the district court certified that any appeal of that order, accompanied by a judgment, would not be taken in good faith. Plaintiff still appealed.

[3] Plaintiff alleges that (1) prison officials called him a snitch and child molester, exposing him to prison violence; (2) the prison law librarian prevented Plaintiff access to forms and other legal materials; (3) if prison staff transfers Plaintiff to another facility, he will be killed; and (4) other judges have failed to ensure he obtain access to a wheelchair and ADA showers.

Because Plaintiff has three strikes, we ordered him to show cause why he should not be required to pay the filing fee before proceeding with this appeal. Section 1915(g) precludes IFP for Plaintiff unless he can show he is under imminent danger of serious physical injury. 28 U.S.C. § 1915(g). In his show-cause response, Plaintiff alleged the prison staff deprived him of his medically necessary wheelchair. We deferred ruling on the three-strikes issue, and Plaintiff moved for leave to proceed IFP. Because the failure to provide a wheelchair could cause imminent serious physical injury, see Fuller v. Wilcox, 288 F. App'x 509, 511 (10th Cir. 2008) (unpublished), we GRANT Plaintiff's motion to proceed on appeal without prepayment of costs and fees.

But satisfying that exception, alone, does not absolve Plaintiff of his responsibility to adhere to his filing restrictions. Johnson v. Nunez, No. 21-1108, 2021 WL 2774949, at *2 (10th Cir. July 2, 2021) (unpublished). Nor does it relieve him of his obligation to provide a rational argument showing why the district court erred in dismissing his complaint. Id. So because Plaintiff failed to comply with the filing restrictions, the district court justifiably dismissed his complaint. We therefore find no abuse of discretion.

FILING RESTRICTIONS

"Federal courts have the inherent power to regulate the activities of abusive litigants by imposing carefully tailored restrictions under appropriate circumstances." Ysais v. Richardson, 603 F.3d 1175, 1180 (10th Cir. 2010). Appropriate circumstances exist when (1) the litigant's lengthy and abusive history is set forth;

(2) the court explains what the litigant must do to obtain its permission to file an action; and (3) the litigant receives notice and an opportunity to oppose the court's order before implementation. Id.

We conclude that Plaintiff's repetitive appeals of dismissals for failure to comply with district-court filing restrictions warrant filing restrictions in this Court.[4] Therefore, to proceed pro se in this Court in any new civil appeal of a dismissal in district court for failure to comply with filing restrictions, Plaintiff must provide the following:

1. A list of all appeals filed involving a suit or claim based on the district court's dismissal for failure to comply with filing restrictions; and
2. A notarized affidavit, in proper legal form, which recites the issues he seeks to present, including a short discussion of the legal basis asserted therefor, and describing with particularity the order being challenged. The affidavit must also certify, to the best of his knowledge, that the legal arguments being raised

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[4] Johnson v. Nunez, No. 21-1108, 2021 WL 2774949, at *1 (10th Cir. July 2, 2021) (concluding Johnson's failure to comply with the district court's filing restrictions justified the district court's dismissal and reminding him of potential sanctions); Johnson v. Little, No. 20-1355, 2021 WL 1561337, at *1 (10th Cir. Apr. 21, 2021) (warning Johnson that filing restrictions were imminent because 28 of his 34 appeals dismissed for failure to satisfy filing restrictions).

And the Tenth Circuit dismissed these cases based on procedural termination without judicial action for failure to pay or failure to respond to a PLRA show-cause order: Nos. 20-1362, 20-1373, 20-1375, 20-1379, 20-1412, 20-1007, 21-1015, 21-1021, 21-1022, 21-1024, 21-1037, 21-1039, 21-1042, 21-1045, 21-1046, 21-1053, 21-1054, 21-1056, 21-1058, 21-1059, 21-1063, 21-1064, 21-1082, 21-1140, 21-1138, 21-1171.

are not frivolous or made in bad faith; that they are warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and that he will comply with all appellate and local rules of this Court.

Plaintiff will submit these filings to the Clerk of the Court, who will review them for compliance with the above restrictions. The Clerk will dismiss the appeal for failure to prosecute if Plaintiff does not fully comply with the above restrictions. If Plaintiff fully complies with the filing restrictions, the Clerk will forward Plaintiff's filings to the Chief Judge or his designee to determine whether to permit Plaintiff's proposed pro se civil appeal to proceed. If the Chief Judge or his designee does not grant authorization, the Clerk will dismiss the matter on behalf of the Court. If the Chief Judge or his designee grants authorization, the Clerk will enter an order directing that the matter may proceed in accordance with, and that Plaintiff must comply with, the Federal Rules of Appellate Procedure and the Tenth Circuit Rules.

Plaintiff may, within twenty days from the date of this Order and Judgment, file written objections, limited to ten pages or fewer, to these proposed restrictions. Absent further order of the Court upon review of any objections, the restrictions will take effect thirty days from the date of this Order and Judgment and apply to any appeal Plaintiff files after that time.

AFFIRMED.

Entered for the Court

Joel M. Carson III
Circuit Judge

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