

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

November 23, 2021

Christopher M. Wolpert
Clerk of Court

JABARI J. JOHNSON,

Plaintiff - Appellant,

v.

LAMBKINS; PEEK; COMBEE;
CORTEZ; AYALA; MARTINEZ;
NERTON; KILPOLITES; DURAN;
MORONES; DETRANCESCO; FOX;
MARTIN; HETWIG; HOFFMAN;
HUNT; GALINA; GILLIS; VALLE;
ROOT; JAMES; WILL; ROYCE;
CRAWFORD, Chaplain; MCALLISTER;
BAINBRIDGE; MOORE; DEAN
WILLIAMS; LITTLE; FERGESSEN;
SMITH; CHRISTOPHER; MARK
ANDREWS; HEADLEY; BOSWICK;
ALLENHAMMER,

Defendants - Appellees.

No. 21-1340
(D.C. No. 1:21-CV-02467-LTB)
(D. Colo.)

ORDER AND JUDGMENT*

* After examining appellant's brief and the 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) and 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

Before **MORITZ, BALDOCK** and **EID**, Circuit Judges.

Plaintiff Jabari Jones is an avid litigant before the courts of our Circuit. Because of his previous efforts, the United States District Court for the District of Colorado imposed filing restrictions on Plaintiff to prevent him from pursuing “groundless and vexatious litigation.” *See Johnson v. Hawkins*, No. 19-cv-03730-LTB, ECF No. 3, at 9, 10–11 (D. Colo. Mar. 4, 2020). We followed the district court’s lead and also imposed filing restrictions on Plaintiff. *See Johnson v. Johnson*, No. 21-1152, 2021 WL 4595172 (10th Cir. Oct. 6, 2021). Our restrictions, however, only went into effect on November 5, 2021 and have no impact on this appeal. *See id.*

Plaintiff’s current suit is filed pursuant to 42 U.S.C. § 1983 and alleges numerous violations relating to prison conditions and ADA compliance. The district court dismissed Plaintiff’s complaint **WITHOUT PREJUDICE** because he failed to comply with the filing restrictions imposed upon him. Unsatisfied, Plaintiff appealed. We exercise jurisdiction under 28 U.S.C. § 1291, and for substantially the reasons stated in the district court’s Order, we affirm the dismissal of Plaintiff’s claim.

Additionally, we consider Plaintiff's motion to proceed *in forma pauperis*. We grant Plaintiff's motion but caution him that he is responsible to continue making payments towards the filing fee until it is paid in full.

AFFIRMED.

ENTERED FOR THE COURT

Bobby R. Baldock
Circuit Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 21-cv-02467-GPG

JABARI J. JOHNSON,

Plaintiff,

v.

LUMBKIN, et al.,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.

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;

¹##Plaintiff has named over forty defendants in this action. The caption in this Order only lists one of the named defendants. 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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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

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 the Prisoner Complaint form. 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

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

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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 September, 2021.

BY THE COURT:

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

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