

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

November 23, 2021

Christopher M. Wolpert
Clerk of Court

JABARI J. JOHNSON,

Plaintiff - Appellant,

v.

KATHLEEN MCGUIRE; HAROLD CLAYHURST; CATHERINE SHEA; DONALD NUNEZ; GONZALES; JAMES JOHNSON; STEPHANIE DALTON; JANET SMITH; DAVID LISNE; KIMBERLY GRAHAM; DEAN WILLIAMS; KATHLEEN BOYD; WILLIAM CAMBELL,

Defendants - Appellees.

No. 21-1320
(D.C. No. 1:21-CV-02393-LTB)
(D. Colo.)

ORDER

On October 25, 2021, this court: (1) held that the Prison Litigation Reform Act, 28 U.S.C. § 1915(g), applies to this appeal; (2) ordered appellant Jabari J. Johnson to pay the full \$505.00 appellate filing fee to the district court on or before November 15, 2021; and (3) advised Mr. Johnson that, if the district court did not receive timely payment in full of the appellate filing fee, this court would dismiss his appeal without further notice.

See 28 U.S.C. § 1915(g); 10th Cir. R. 3.3(B), 10th Cir. R. 42.1.

This matter is now before the court because Mr. Johnson has not paid the appellate filing fee to the district court. Accordingly, the court dismisses Mr. Johnson's appeal for failure to prosecute. *See* 10th Cir. R. 3.3(B) and 42.1.

A copy of this order shall stand as and for the mandate of the court.

Entered for the Court



CHRISTOPHER M. WOLPERT, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 21-cv-02393-GPG

JABARI J. JOHNSON,

Plaintiff,

v.

KATHLEEN McGUIRE,
HAROLD CLAYHURST,
CATHERINE SHEA,
DONADL NUNEZ,
GONZALES,
JAMES JOHNSON,
STEPHANIE DALTON,
JANET SMITH,
DAVID LISNE,
KIMBERLY GRAHAM,
DEAN WILLIAMS,
KATHLEEN BOYD,
WILLIAM CAMBELL,

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

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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 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 a Prisoner Complaint form. Plaintiff, however, contends that he has been denied a notary and the "Section E. requirements." See ECF No. 1 at 6. 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 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 7th day of September, 2021.

BY THE COURT:

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

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