

UNITED STATES COURT OF APPEAL

FOR THE TENTH CIRCUIT

JABARI J. JOHNSON,

Plaintiff - Appellant,

v.

DEFRANCESCO, et al.,

Defendants - Appellees

FILED
United States Court of Appeals
Tenth Circuit

December 13, 2021

Christopher M. Wolpert
Clerk of Court

No. 21-1428
(D.C. No. 1:21-CV-02922-LTB)
(D. Colo.)

ORDER

This matter is before the court following the opening of this *pro se* appeal.

Plaintiff Jabari Johnson appeals the district court's order dismissing the underlying prisoner civil rights case for failure to comply with that court's filing restrictions order.

Mr. Johnson is now subject to filing restrictions in this court as well. *See Johnson v. Johnson*, No. 21-1152, 2021 WL 4595172 (10th Cir. Oct. 6, 2021) (unpublished). Mr. Johnson is not in compliance with this court's filing restrictions, as we describe below.

"T[o] proceed *pro se* in this Court in any new civil appeal of a dismissal in district court for failure to comply with filing restrictions," Mr. Johnson must apply for permission to do so. *Id.* at *2. His petition for permission to proceed *pro se* must provide the following information:

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 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.

Id.

At this time, Mr. Johnson has not submitted a petition to proceed *pro se* in this appeal. **On or before December 30, 2021**, Mr. Johnson must file a petition to proceed *pro se* that fully complies with this court's filing restrictions requirements with particularity. The petition must be specifically tailored to this appeal and not be combined with a petition filed for any other appeal. The petition must also be legible without requiring extraordinary measures to be read.

The court will dismiss this appeal without further notice if Mr. Johnson fails to submit a timely petition in the proper form that: (1) meets each and every requirement listed in the filing restrictions order; and (2) complies with the guidance provided in this order to show cause. *Id.* at *3; *see also* 10th Cir. R. 42.1.

Mr. Johnson should note that the procedural issue identified in this order is only one among other issues that may be addressed later by separate order, if necessary.

Entered for the Court
CHRISTOPHER M. WOLPERT, Clerk



by: Lisa A. Lee
Counsel to the Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 21-cv-02922-GPG

JABARI J. JOHNSON,

Plaintiff,

v.

DeFRANCESCO, and
DURAN,

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;
- 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

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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 a certified account statement attached 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 Plaintiff files a notice of appeal, he must pay the full \$505 appellate filing fee or file a

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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 4th day of November, 2021.

BY THE COURT:

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

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