

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WO

KM

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Leroy Montoya,

Plaintiff,

vs.

Tom Sheahan, et al.,

Defendants.

) No. CV 09-8169-PCT-JAT (ECV)

) **ORDER**

On September 25, 2009, Plaintiff Leroy Montoya, who is confined in the Arizona State Prison Complex-Yuma, filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 and an Application to Proceed *In Forma Pauperis*. On October 30, 2009, the Court denied the Application to Proceed with leave to re-file. After receiving an extension of time, Plaintiff filed a new Application to Proceed. In a January 12, 2010 Order, the Court granted the Application to Proceed and dismissed the Complaint because Plaintiff had failed to state a claim. The Court gave Plaintiff 30 days to file an amended complaint that cured the deficiencies identified in the Order.

After again receiving extensions of time, on June 3, 2010, Plaintiff filed his First Amended Complaint (Doc. 22). On June 14, 2010, the Court dismissed the First Amended Complaint with leave to amend (Doc. 23). On July 8, 2010, Plaintiff filed a Motion for Extension of Time (Doc. 24).

I. Motion

In his Motion for Extension of Time, Plaintiff requests an additional 30 days within

1 which to file a second amended complaint. Plaintiff states that he did not receive the Court's
2 June 14th Order until July 5, 2010 and that he needs additional time to file a second amended
3 complaint.

4 In the June 14, 2010 Order, the Court explicitly warned Plaintiff that "due to the
5 already delayed progress of this action, absent extraordinary circumstances, he will not be
6 granted extensions of time for filing a second amended complaint." Plaintiff has presented
7 no extraordinary circumstances that warrant a 30-day extension of time. The Court will
8 therefore deny Plaintiff's Motion for Extension of Time. Plaintiff will have 10 days from the
9 filing date of this Order to file a second amended complaint that complies with the Court's
10 June 14, 2010 Order.

11 **II. Warnings**

12 **A. Release**

13 Plaintiff must pay the unpaid balance of the filing fee within 120 days of his release.
14 Also, within 30 days of his release, he must either (1) notify the Court that he intends to pay
15 the balance or (2) show good cause, in writing, why he cannot. Failure to comply may result
16 in dismissal of this action.

17 **B. Address Changes**

18 Plaintiff must file and serve a notice of a change of address in accordance with Rule
19 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other
20 relief with a notice of change of address. Failure to comply may result in dismissal of this
21 action.

22 **C. Copies**

23 Plaintiff must submit an additional copy of every filing for use by the Court. See
24 LRCiv 5.4. Failure to comply may result in the filing being stricken without further notice
25 to Plaintiff.

26 **D. Possible "Strike"**

27 Because the First Amended Complaint has been dismissed for failure to state a claim,
28 if Plaintiff fails to file a second amended complaint correcting the deficiencies identified in

1 the June 14, 2010 Order, the dismissal may count as a “strike” under the “3-strikes” provision
2 of 28 U.S.C. § 1915(g). Under the 3-strikes provision, a prisoner may not bring a civil action
3 or appeal a civil judgment *in forma pauperis* under 28 U.S.C. § 1915 “if the prisoner has, on
4 3 or more prior occasions, while incarcerated or detained in any facility, brought an action
5 or appeal in a court of the United States that was dismissed on the grounds that it is frivolous,
6 malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is
7 under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

8 **E. Possible Dismissal**

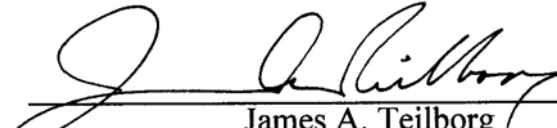
9 If Plaintiff fails to timely comply with every provision of the June 14, 2010 Order, or
10 this Order, including these warnings, the Court may dismiss this action without further
11 notice. See Ferdik, 963 F.2d at 1260-61 (a district court may dismiss an action for failure to
12 comply with any order of the Court).

13 **IT IS ORDERED:**

14 (1) Plaintiff’s July 8, 2010 Motion for Extension of Time (Doc. 24) is **denied**.
15 Plaintiff has **10 days** from the date this Order is filed to file a second amended complaint in
16 compliance with the June 14, 2010 Order.

17 (2) If Plaintiff fails to file a second amended complaint within 10 days, the Clerk
18 of Court must, without further notice, enter a judgment of dismissal of this action with
19 prejudice that states that the dismissal may count as a “strike” under 28 U.S.C. § 1915(g).

20 DATED this 27th day of July, 2010.

21
22
23 
24 James A. Teilborg
United States District Judge