

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Boyd N. Boland

Civil Action No. 05-cv-00171-MSK-BNB

ANTHONY RAY MARTINEZ,

Plaintiff,

v.

DENVER DEPUTY SHERIFF, DAVID O. MARTINEZ,

Defendant.

ORDER

This matter arises on the **Plaintiff's Motion to Request Dismissal of Motion for Protective Order** [Doc. # 174, filed 11/5/2009] (the "*Motion*"). The Motion is confusing and states in its entirety:¹

COMES NOW, Anthony Ray Martinez, to make know to the court that a conflict resolution has ben reached in the above action. I have talked to Sgt. Romero and they have help me to get out of the infirmary aka Medical unit therefore I wish to dismiss the complaint I sent to the Court. only the Last motion not the complaint!

Motion [Doc. # 174]. The *Motion* is signed by both the plaintiff and Sgt. Romero. Id.

The plaintiff is proceeding *pro se*, and I must construe his filings liberally. See Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991). In view of the final, handwritten phrase of the *Motion*, I construe it as a motion to withdraw the plaintiff's *Motion to Request Order for Protection* [Doc. # 148, filed 6/10/2009] (the "*Motion for Protection*"). My conclusion that the

¹In this order, I quote the plaintiff's filings verbatim, without any attempt to identify or correct errors.

Motion is directed to the *Motion for Protection* is bolstered by the fact that the *Motion for Protection* seeks relief from the plaintiff's placement in a medical unit. In particular, the *Motion for Protection* states:

The Plaintiff is being house in the Medical Unit, and in fear of imminent danger of assault, and or sickness. The Plaintiff is in good health and is afraid that he will become ill, since there are termanally ill inmates housed in the same cell, which is built fior two, but now has four inmates. . . . The Plaintiff has been Cleared by both Mental Health, and Medical Staff, to go to General Population.

Motion for Protection at ¶4.

I previously recommended that the *Motion for Protection* be denied because this action concerns a claim on an alleged assault occurring in 2004 and has nothing to do with the plaintiff's current conditions of confinement. *Recommendation* [Doc. # 173]. The district judge has not yet acted on the *Recommendation*.

IT IS ORDERED that the *Motion* [Doc. # 174] is GRANTED.

IT IS FURTHER ORDERED that the *Recommendation* [Doc. # 173] is WITHDRAWN.

Dated November 12, 2009.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge