

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

Civil Action No. 06 - CV - 02276 - BNB

NOV 14 2006

(The above civil action number must appear on all future papers sent to the court in this action. Failure to include this number may result in a delay in the consideration of your claims.)

REGINA C. BANCHAM
CLERK

CORTEZ EDWARD WALKER,

Plaintiff,

v.

JOE ORTIZ,
DEBRA FOSTER,
JIM MICHAUD,
RON LEYBA,
CATHIE HOLST,
JERRI GREEN,
DONALD LAWSON,
JOAN KOPRIVNIKAR, and
DOCTOR L. CABLING,

Defendants.

**ORDER DIRECTING CLERK TO COMMENCE CIVIL ACTION AND
DIRECTING PLAINTIFF TO CURE DEFICIENCY AND TO SHOW CAUSE**

Plaintiff Cortez Edward Walker has submitted a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915, a letter to the Court, a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915, a request to show cause, and a Prisoner Complaint. As part of the Court's review pursuant to D.C.COLO.LCivR 8.2, the Court has determined that the submitted documents are deficient as described in this order. Notwithstanding the deficiencies, the clerk of the Court will be directed to commence a civil action. Plaintiff will be directed to cure the

following if he wishes to pursue his claims. Any papers which the Plaintiff files in response to this order must include the civil action number on this order.

28 U.S.C. § 1915 Motion and Affidavit:

- (1) is not submitted
- (2) is missing affidavit
- (3) is missing certified copy of prisoner's trust fund statement for the 6-month period immediately preceding this filing
- (4) is missing required financial information
- (5) is missing an original signature by the prisoner
- (6) is not on proper form (must use the court's current form)
- (7) names in caption do not match names in caption of complaint, petition or habeas application
- (8) An original and a copy have not been received by the court. Only an original has been received.
- (9) other _____

Complaint, Petition or Application:

- (10) is not submitted
- (11) is not on proper form (must use the court's current form)
- (12) is missing an original signature by the prisoner
- (13) is missing page nos. _____
- (14) uses et al. instead of listing all parties in caption
- (15) An original and a copy have not been received by the court. Only an original has been received.
- (16) Sufficient copies to serve each defendant/respondent have not been received by the court.
- (17) names in caption do not match names in text
- (18) other _____

Mr. Walker is a prisoner in the custody of the Colorado Department of Corrections (DOC) and currently is incarcerated at the San Carlos Correctional Facility in Pueblo, Colorado. He seeks leave to proceed on appeal without prepayment of fees or security therefor pursuant to 28 U.S.C. § 1915 (Supp. 2006).

In relevant part, 28 U.S.C. § 1915 provides:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an

action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g).

Although he contends that he is under imminent danger of serious physical injury, Mr. Walker fails to allege facts in support of this assertion. Therefore, the Court must determine whether Mr. Walker has brought at least three actions or appeals in federal court that were dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted. For the purposes of this analysis, the Court may consider actions or appeals dismissed prior to the enactment of 28 U.S.C. § 1915(g). ***Green v. Nottingham***, 90 F.3d 415, 420 (10th Cir. 1996).

A review of the docketing records for this court reveals that, while he was a prisoner, Mr. Walker, on three or more prior occasions, has brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted. ***See Walker v. Cooper***, Civil Action No. 91-cv-1813-JRC (D. Colo. Jan. 6, 1992) (claims seeking relief under 42 U.S.C. § 1983 dismissed for failure to state a claim); ***Walker v. Andrews***, Civil Action No. 96-cv-821-DBS (D. Colo. Aug. 22, 1996) (dismissed as legally frivolous and for failure to state a claim), ***appeal dismissed***, No. 96-1529 (10th Cir. Mar. 20, 1997); ***Walker v. Zavaras***, Civil Action No. 98-cv-1981-ZLW (D. Colo. Apr. 9, 1999) (dismissed as legally frivolous), No. 99-1192 (10th Cir. Aug. 6, 1999) (appeal dismissed as legally frivolous). In addition, the United States Court of Appeals for the Tenth Circuit expressly stated that its dismissal of the appeal in 98-cv-1981-ZLW counts as a

strike under 28 U.S.C. § 1915(g). Therefore, Mr. Walker will be ordered to show cause why he should not be denied leave to proceed pursuant to 28 U.S.C. § 1915(g).

Accordingly, it is

ORDERED that the clerk of the court commence a civil action in this matter. It is

FURTHER ORDERED that the Mr. Walker cure the deficiencies designated above **within thirty (30) days from the date of this order**. Any papers which Mr. Walker files in response to this order must include the civil action number on this order.

It is

FURTHER ORDERED that Mr. Walker show cause in writing **within thirty (30) days from the date of this order** why he should not be denied leave to proceed pursuant to 28 U.S.C. § 1915: (1) because he has, on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted; and (2) because he fails to establish that he is under imminent danger of serious physical injury. It is

FURTHER ORDERED that the response shall be titled, "Response to Order to Show Cause," and shall be filed with the Clerk of the Court, United States District Court for the District of Colorado, Alfred A. Arraj United States Courthouse, 901 Nineteenth Street, A105, Denver, Colorado 80294. It is

FURTHER ORDERED that, if Mr. Walker fails to cure the designated deficiencies or to show cause **within thirty (30) days from the date of this order**, the

complaint and the action will be dismissed without further notice. The dismissal shall be without prejudice.

DATED at Denver, Colorado, this 9th day of November, 2003.

BY THE COURT:



BOYD N. BOLAND
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. **06 - CV - 02276** - bnb

Cortez Edward Walker
Prisoner No. 56375
San Carlos Corr. Facility
1410 W. 13th Street
PO Box 3
Pueblo, CO 81002

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 11-14-06

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk