

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 07-cv-01249-REB-CBS

RAYMOND A. BUTLER,  
Plaintiff,

v.

H.A. RIOS, JR., and  
CORRECTIONAL OFFICER PRICE,  
Defendants.

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ORDER

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Magistrate Judge Craig B. Shaffer

This civil action comes before the court on Mr. Butler's "Motion to Review PLRA Payments" (filed March 8, 2010) (doc. # 52). Pursuant to the Order of Reference dated September 14, 2007 (doc. # 12) and the memorandum dated March 9, 2010 (doc. # 53), this matter was referred to the Magistrate Judge.

In 2007, Mr. Butler, a federal prisoner, filed a complaint asserting violations of his federal civil rights pursuant to *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). The district court granted Mr. Butler's motion to proceed *in forma pauperis* and ordered him to pay an initial partial filing fee of \$11.00 or show cause why he had no means by which to pay the fee. See 28 U.S.C. § 1915(b)(1). Mr. Butler was also ordered to make monthly payments of twenty percent of the preceding month's income credited to his prison trust fund account or show cause each month why he was unable to do so. He was specifically directed that to show cause he must file a current certified copy of his prison trust fund account statement. He was warned that his complaint would be dismissed if he did not pay the initial partial filing fee or make the monthly payments.

Mr. Butler paid the partial filing fee but failed to either make the monthly payments for August and September 2007, or show cause for that failure by providing his current trust fund account statement. On September 26, 2007, the district court entered a second order directing Butler to make the monthly payments no later than the fifteenth day of each month

or file a certified copy of his inmate trust fund account statement or show cause for the failure. Again, the district court warned Mr. Butler that his complaint would be dismissed if he failed to comply.

Despite the warning, Mr. Butler failed to make the required payments and did not file copies of his trust fund account statement. Accordingly, the magistrate judge issued a recommendation that Mr. Butler's complaint be dismissed. (See doc. # 19). Mr. Butler filed objections to the recommendation. (See doc. # 23). Mr. Butler requested an opportunity to bring his payments current and informed the court that a \$45.00 payment would be sent on November 10, 2007. (See *id*). The district court considered Mr. Butler's objections but adopted the magistrate judge's recommendation and dismissed the complaint with prejudice, noting that Mr. Butler's explanation did not excuse his failure to respond to the court's September 26th order and that the promised back payment of \$45.00 had never been received by the court. (See doc. # 26).

Mr. Butler then filed an appeal. (See doc. # 28 ("Notice of Appeal")). The Tenth Circuit Court of Appeals affirmed the dismissal of Mr. Butler's complaint for substantially the reasons stated in the recommendation dated October 30, 2007 and the order dated November 27, 2007. (See doc. # 39). The Tenth Circuit Court of Appeals granted Mr. Butler's motion to proceed *in forma pauperis* on appeal and directed him to continue making partial payments until his appellate filing fees are paid in full pursuant to 28 U.S.C. § 1915(b). (See *id*).

In sum, Mr. Butler remains obligated to make monthly payments for this civil action and his appeal or show cause each month why he is unable to do so, until the filing fees for this action and the appeal are paid in full.

Accordingly,

IT IS ORDERED that Mr. Butler's "Motion to Review PLRA Payments" (filed March 8, 2010) (doc. # 52) is GRANTED to the extent that the court requests the Clerk of the Court to mail copies of a current docket sheet and financial printout to Mr. Butler, inmate registration

# 17148-047 at USP Allenwood, P.O. Box 3000, White Deer PA. 17887.<sup>1</sup>

DATED at Denver, Colorado, this 9th day of March, 2010.

BY THE COURT:

s/Craig B. Shaffer  
United States Magistrate Judge

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<sup>1</sup> The court's independent review of the Federal Bureau of Prisons Inmate Locator website reveals that Mr. Butler is currently incarcerated at USP Allenwood in Pennsylvania. See BOP Inmate Locator Website ([http://www.bop.gov/inmate\\_locator](http://www.bop.gov/inmate_locator)) (last visited March 9, 2010). Mr. Butler has not filed notice with the court pursuant to D.C. COLO. LCivR 10.1 M. within five days after any change of his address or telephone number.