

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 08-cv-02428-BNB

DAVID PEREZ,

Plaintiff,

v.

ARISTEDES ZAVARAS,
BILL RITTER, and
DOC – TIME COMPUTATION,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

JAN 15 2009

GREGORY C. LANGHAM
CLERK

ORDER OF DISMISSAL

Plaintiff, David Perez, is a prisoner in the custody of the Colorado Department of Corrections (DOC) who currently is incarcerated at the Sterling, Colorado, correctional facility. He initiated the instant action by filing *pro se* a civil rights complaint pursuant to 42 U.S.C. § 1983 (2006) and 28 U.S.C. § 1343(a)(3) (1993), asking for injunctive relief and money damages or, alternatively, for what appeared to be habeas corpus relief.

Mr. Perez was granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 (2006) without payment of an initial partial filing fee.

On December 5, 2008, Magistrate Judge Boyd N. Boland ordered Mr. Perez to file within thirty days an amended complaint that sued the proper parties, that alleged each Defendant's personal participation in the asserted claims, and that complied with the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure. Magistrate Judge Boland also informed Mr. Perez that he may not seek habeas corpus relief in the

instant civil rights action. Magistrate Judge Boland noted that, to the extent Plaintiff was asking this Court order the DOC to reduce the length of his current sentence, his sole federal remedy is a writ of habeas corpus pursuant to 28 U.S.C. § 2254 after exhaustion of state remedies. **See Preiser v. Rodriguez**, 411 U.S. 475, 504 (1973).

Magistrate Judge Boland warned Mr. Perez that if he failed within the time allowed to file an amended complaint that complied with the December 5, 2008, order within the time allowed, the complaint and the action would be dismissed without further notice. Mr. Perez has failed within the time allowed to comply with the December 5 order or otherwise to communicate with the Court in any way. Accordingly, it is

ORDERED that the complaint and the action are dismissed without prejudice for the failure of Plaintiff, David Perez, to file within the time allowed an amended complaint that complied with the directives of the December 5, 2008, order and for his failure to prosecute.

DATED at Denver, Colorado, this 14 day of January, 2009.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Zita Weinschenk", written over a horizontal line.

ZITA L. WEINSHIENK, Senior Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 08-cv-02428-BNB

David Perez
Prisoner No. 64124
Sterling Correctional Facility
PO Box 6000
Sterling, CO 80751

I hereby certify that I have mailed a copy of the **ORDER AND JUDGMENT** to the
above-named individuals on 1/15/09

GREGORY C. LANGHAM, CLERK

By: _____

Deputy Clerk

