

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-01372-BNB

BYRON GAY,

Plaintiff,

v.

DANNY ROJAS,  
KRIS KRONCKE, et al.,  
JOHN DOES 1 THROUGH 5 (Police Officers), and  
OTHERS TO BE NAMED LATER,

Defendants.

FILED  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

JUL 20 2010

GREGORY C. LANGHAM  
CLERK

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ORDER DIRECTING PLAINTIFF TO FILE AMENDED COMPLAINT

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Plaintiff, Byron Gay, is an inmate at the Denver County Jail in Denver, Colorado. Mr. Gay has filed *pro se* a Prisoner Complaint alleging that his rights under the United States Constitution have been violated. The court must construe the complaint liberally because Mr. Gay is not represented by an attorney. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10<sup>th</sup> Cir. 1991). However, the court should not be an advocate for a *pro se* litigant. *See Hall*, 935 F.2d at 1110. For the reasons stated below, Mr. Gay will be ordered to file an amended complaint.

The Prisoner Complaint is deficient because Mr. Gay fails to allege facts that demonstrate how each Defendant personally participated in the asserted constitutional violation. Mr. Gay claims that his constitutional rights were violated by Defendant Danny Rojas and other unidentified police officers on November 28, 2010. However, he fails to assert any claim against Defendant Kris Kroncke and he fails to allege any

facts that demonstrate Defendant Kroncke personally participated in the asserted constitutional violations.

The general rule that *pro se* pleadings must be construed liberally has limits, and “the court cannot take on the responsibility of serving as the litigant’s attorney in constructing arguments and searching the record.” ***Garrett v. Selby Connor Maddux & Janer***, 425 F.3d 836, 840 (10<sup>th</sup> Cir. 2005). In order to state a claim in federal court, Mr. Gay must explain what each defendant did to him; when the defendant did it; how the defendant’s action harmed him; and what specific legal right the plaintiff believes the defendant violated. ***Nasious v. Two Unknown B.I.C.E. Agents***, 492 F.3d 1158, 1163 (10<sup>th</sup> Cir. 2007). Furthermore, personal participation is an essential allegation in a civil rights action. ***See Bennett v. Passic***, 545 F.2d 1260, 1262-63 (10<sup>th</sup> Cir. 1976). To establish personal participation, Mr. Gay must show that each Defendant caused the deprivation of a federal right. ***See Kentucky v. Graham***, 473 U.S. 159, 166 (1985). There must be an affirmative link between the alleged constitutional violation and each Defendant’s participation, control or direction, or failure to supervise. ***See Butler v. City of Norman***, 992 F.2d 1053, 1055 (10<sup>th</sup> Cir. 1993). A Defendant may not be held liable on a theory of respondeat superior. ***See Pembaur v. City of Cincinnati***, 475 U.S. 469, 479 (1986).

Therefore, Mr. Gay will be ordered to file an amended complaint that clarifies what claim or claims he may be asserting against Defendant Kroncke and that also includes allegations of personal participation by Defendant Kroncke if he wishes to pursue any claims against Defendant Kroncke. Accordingly, it is

ORDERED that Mr. Gay file **within thirty (30) days from the date of this order** an amended complaint that complies with this order if he wishes to pursue his claim against each named Defendant. It is

FURTHER ORDERED that the clerk of the court mail to Mr. Gay, together with a copy of this order, two copies of the following form: Prisoner Complaint. It is

FURTHER ORDERED that, if Mr. Gay fails to file an amended complaint that complies with this order to the court's satisfaction within the time allowed, Defendant Kroncke will be dismissed as a party to this action without further notice.

DATED July 20, 2010, at Denver, Colorado.

BY THE COURT:

s/ Boyd N. Boland  
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

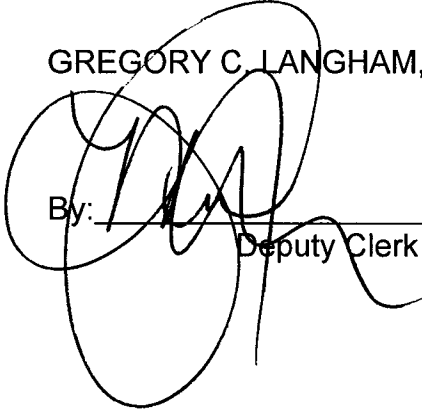
**CERTIFICATE OF MAILING**

Civil Action No. 10-cv-01372-BNB

Byron Gay  
Prisoner No. 0000251823  
Denver County Jail  
PO Box 1108  
Denver, CO 80201

I hereby certify that I have mailed a copy of the **ORDER and two copies of the Prisoner Complaint** to the above-named individuals on 7/20/10

GREGORY C. LANGHAM, CLERK

By:  \_\_\_\_\_  
Deputy Clerk