

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-02146-BNB

BURTON SANDLES,
Plaintiff,

v.

DENVER DOWNTOWN CORRECTIONAL FACILITY,
CHIEF KEILER,
MAJOR CONNER, and
CAPTAIN McCALL,
Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

OCT 20 2010

GREGORY C. LANGHAM
CLERK

ORDER OF DISMISSAL

Plaintiff, Burton Sandles, is an inmate at the Denver County Jail in Denver, Colorado. Mr. Sandles initiated this action by filing *pro se* a Prisoner Complaint. On September 14, 2010, Magistrate Judge Boyd N. Boland entered an order granting Mr. Sandles leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 in this action. Pursuant to § 1915(b)(1), Magistrate Judge Boland ordered Mr. Sandles either to pay an initial partial filing fee of \$15.00 or to show cause why he has no assets and no means by which to pay the initial partial filing fee. In order to show cause, Mr. Sandles was directed to file a current certified copy of his inmate trust fund account statement. Mr. Sandles was warned that the complaint and the action would be dismissed without further notice if he failed either to pay the initial partial filing fee or to show cause as directed within thirty days. According to the certified account statement submitted to the Court on September 10, 2010, the balance in Mr. Sandles' inmate account on September 7, 2010, was \$17.28.

On October 4, 2010, Mr. Sandles submitted a response to Magistrate Judge Boland's order granting him leave to proceed *in forma pauperis* in which he alleges he is unable to pay the initial partial filing fee. Attached to the response is a copy of Mr. Sandles' inmate trust fund account statement dated September 30, 2010, that indicates the balance in his inmate account is \$0.10. However, despite demonstrating that he currently lacks sufficient funds in his inmate account to pay the initial partial filing fee, the Court finds that Mr. Sandles fails to demonstrate good cause for his failure to pay the \$15.00 initial partial filing fee because the account statement also reveals that he had sufficient funds to pay the initial partial filing fee but chose not to do so. More specifically, the account statement submitted to the Court on October 4 reveals that a total of \$47.50 was deposited into Mr. Sandles' account in three transactions on September 17, 19, and 21 and that Mr. Sandles made a total of \$47.46 in commissary purchases in two transactions on September 21 and 28. Prior to making each of these commissary purchases, Mr. Sandles had sufficient funds to pay the initial partial filing fee. On October 6, 2010, Mr. Sandles filed another document in this action, but that document does not address his ability to pay the initial partial filing fee.


Mr. Sandles has failed within the time allowed either to pay the initial partial filing fee or to show cause why he is unable to pay the initial partial filing fee. Mr. Sandles may not avoid payment of the initial partial filing fee simply by spending the funds he receives in the jail commissary. Therefore, the complaint and the action will be dismissed. Accordingly, it is

ORDERED that the Prisoner Complaint and the action are dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure because

Plaintiff failed within the time allowed either to pay the initial partial filing fee or to show cause as directed why he was unable to pay the initial partial filing fee.

DATED at Denver, Colorado, this 20th day of October, 2010.

BY THE COURT:



CHRISTINE M. ARGUELLO
United States District Judge, for
ZITA LEESON WEINSHIENK, Senior Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 10-cv-02146-BNB

Burton Sandles
Prisoner No. 0000632568
Denver County Jail
P.O. Box 1108
Denver, CO 80201

I hereby certify that I have mailed a copy of the **ORDER AND JUDGMENT** to the above-named individuals on 10/20/10

GREGORY C. LANGHAM, CLERK

By


Deputy Clerk