

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

JUL 18 2011

GREGORY C. LANGHAM
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-cv-00768-BNB

JEREMY PINSON,

Plaintiff,

v.

FEDERAL BUREAU OF PRISONS,
CHARLES SAMUELS,
JOHN RATHMAN,
RUSSELL PERDUE,
LEE GREEN,
BLAKE DAVIS,
RUSS KRIST,
JOSE SANTANA,
HARTLEY LAPPIN,
MICHAEL NALLEY,
TINA SUDLOW,
PATRICIA RANGEL,
DIANNE KRIST,
W. HEIM,
MICHELLE BOND, and
JOHN DIGNAM,

Defendants.

ORDER DISCHARGING ORDER TO SHOW CAUSE
AND GRANTING LEAVE TO PROCEED PURSUANT TO 28 U.S.C. § 1915

At issue before the Court is the Response Plaintiff filed on July 14, 2011, pursuant to Magistrate Judge Boyd N. Boland's Order to Show Cause. The Order to Show Cause directed Plaintiff to show cause why he should not be denied leave to proceed pursuant to 28 U.S.C. § 1915(g) because he has, on three or more occasions, brought an action in this Court that was dismissed pursuant to § 1915(e).

In the Response, Plaintiff asserts that *Pinson v. Chipi, et al.*, No. 09-cv-00283-WTH-GRJ (M.D. Fla. July 30, 2009),¹ remains pending in the U.S. Supreme Court. Although the Eleventh Circuit has not entered the notation on the docket for Appellate Case No. 10-12235-B showing Plaintiff's petition to the Supreme Court, upon review of the U.S. Supreme Court's Docket, the Court finds that the Eleventh Circuit's dismissal of Case No. 09-cv-00283 is pending review by the Supreme Court under Case No. 10-11063. Therefore, the Court will discharge the Order to Show Cause in this case with respect to Plaintiff's 28 U.S.C. § 1915(g) status.

The Court notes, however, that in *Pinson v. Grimes, et al.*, No. 09-cv-00238-WTH-GRJ (M.D. Fla. July 30, 2009),² subsequent to the Eleventh Circuit's affirming the Middle District of Florida's dismissal for abuse of judicial, Plaintiff petitioned the U.S. Supreme Court regarding the decision. The U.S. Supreme Court denied the petition on November 1, 2010, *see Pinson v. Grimes, et al.*, No. 10-6235, 131 S. Ct. 527 (Nov. 1, 2010), and for purposes of § 1915(g) a strike in this case is ripe, *see Hafed v. Fed. Bur. of Prisons*, 635 F.3d 1172, 1174 (10th Cir 2011).

Furthermore, Plaintiff is subject to another strike in *Pinson v. Watkins, et al.*, No. 06-cv-00323-F (W.D. Okla. May 9, 2007) (dismissed for failure to exhaust administrative remedies and as procedurally barred), for failure to state a claim. *See Steele v. Fed. Bureau of Prisons*, 355 F.3d 1204, 1213 (10th Cir. 2003) (a dismissal based on lack of exhaustion should be dismissed without prejudice but constitutes a strike for purposes

¹ Magistrate Judge Boland found Case No. 09-cv-00283 w as dismissed under § 1915(e).

² Magistrate Judge Boland found Case No. 09-cv-00238 w as dismissed under § 1915(e).

of § 1915(g)), *abrogated on other grounds by Jones v. Bock*, 549 U.S. 199 (2007).

Nonetheless, the Court will allow Plaintiff leave to proceed pursuant to 28 U.S.C. § 1915 in this case. Accordingly, it is

ORDERED that the Order to Show Cause entered on July 6, 2011, is discharged and the Order entered on May 19, 2011, Doc. No. 9, is reinstated. It is

FURTHER ORDERED that Plaintiff's Motion to Add Interested Parties, Doc. No. 11, is denied as inappropriate.

DATED at Denver, Colorado, this 18th day of July, 2011.

BY THE COURT:

s/Craig B. Shaffer
Craig B. Shaffer
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 11-cv-00768-BNB

Jeremy Pinson
Reg. No. 16267-064
ADX Florence
PO Box 8500
Florence, CO 81226

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on July 18, 2011.

GREGORY C. LANGHAM, CLERK

By:  _____
Deputy Clerk