

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-cv-01289-BNB

DARIAN L. HUNTER,

Plaintiff,

v.

CLEAR CREEK COUNTY SHERIFF'S DEPT.,
FEDERAL BUREAU OF PRISONS,
FLORENCE CORRECTIONAL INSTITUTION,
J. WANDS, Warden,
R. SAMS, Otero/Bravo Unit Counselor,
M. TUCKER, Otero/Bravo Unit Manager,
MS./MRS. McEVOY, Otero/Bravo Unit Case Manager,
OKVATH, SHU Officer,
HOLDER, SHU Officer,
MS./MRS. S. MARTINEZ, SHU Property Officer, and
MS./MRS. GREEN, Head of Education Department,

Defendants.

ORDER OF DISMISSAL

On January 18, 2012, Magistrate Judge Craig B. Shaffer entered an order directing Plaintiff, Darian L. Hunter, to file a third amended complaint that complies with the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure. Mr. Hunter was warned that the action would be dismissed without further notice if he failed to file a third amended complaint within thirty days.

Mr. Hunter has failed to file a third amended complaint within the time allowed. Therefore, the action will be dismissed without prejudice for failure to comply with the order directing him to file a third amended complaint.

The Court also finds that Mr. Hunter has failed to comply with court orders directing him to make monthly filing fee payments. On June 9, 2011, Mr. Hunter was granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 in this action. On September 12, 2011, he was allowed to proceed without payment of an initial partial filing fee. Pursuant to § 1915(b)(1) and (2), Mr. Hunter was directed in both orders to pay the entire \$350.00 filing fee and he was ordered to make monthly installment payments until the \$350.00 filing fee was paid in full. Mr. Hunter was instructed either to make the required monthly payments or to show cause each month why he has no assets and no means by which to make a monthly payment. In order to show cause, Mr. Hunter was directed to file a current certified copy of his inmate trust fund account statement. Mr. Hunter was warned that a failure to comply with the requirements of § 1915(b)(2) could result in the dismissal of this action without further notice.

On November 4, 2011, Mr. Hunter made a single monthly filing fee payment in this action in the amount of \$12.00. He has not made any other monthly filing fee payments, and he has not shown cause why he has been unable to make any monthly filing fee payments since November 4, 2011. As a result, the action also will be dismissed for failure to comply with the filing fee payment requirements of § 1915(b)(2) and the orders directing Mr. Hunter to make monthly filing fee payments.

Furthermore, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith and therefore *in forma pauperis* status will be denied for the purpose of appeal. See *Coppedge v. United States*, 369 U.S. 438 (1962). If Plaintiff files a notice of appeal he also must pay the full \$455 appellate filing fee or file a motion to proceed *in forma pauperis* in the United States

Court of Appeals for the Tenth Circuit within thirty days in accordance with Fed. R. App. P. 24. Accordingly, it is

ORDERED that the complaint and the action are dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure because Mr. Hunter failed to comply with orders directing him to file an amended complaint and to make monthly filing fee payments. It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied.

DATED at Denver, Colorado, this 27th day of February, 2012.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, Senior Judge
United States District Court