

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-cv-02314-BNB

EDMOND WALKER,

Plaintiff,

v.

STARK,

Defendant.

ORDER OF DISMISSAL

Plaintiff, Edmond Walker, currently is incarcerated at the Jefferson County Detention Center in Golden, Colorado. Mr. Walker, acting *pro se*, filed a Prisoner Complaint. He has been granted leave to proceed pursuant to 28 U.S.C. § 1915 without payment of an initial partial filing fee.

In his complaint, Mr. Walker alleges that Defendant Stark, a Denver police officer, violated his constitutional rights on July 16, 2010, by confiscating his bicycle as stolen even after he showed the officer a receipt for the purchase of the bicycle. He asserts that he filed a complaint with the Office of Independent Monitor, which referred his complaint to the Denver police department's internal affairs division, but his bicycle was not returned and allegedly is not at the police department. It is not clear whether Plaintiff's current incarceration at the Jefferson County Detention Center is related to the bicycle incident.

On November 2, 2011, Magistrate Judge Boyd N. Boland ordered Mr. Walker to

show cause within thirty days why the instant action should not be dismissed as repetitive of **Walker v. Stark**, No. 11-cv-01676-LTB (D. Colo. July 20, 2011), in which Mr. Walker made similar allegations against the same Defendant. In the order dismissing No. 11-cv-01676-LTB as legally frivolous, Mr. Walker was informed that he had an adequate remedy available to him in state court under state law.

In the November 2 order to show cause in the instant action, Magistrate Judge Boland informed Mr. Walker that repetitious litigation of virtually identical causes of action may be dismissed as frivolous or malicious. **See Bailey v. Johnson**, 846 F.2d 1019, 1021 (5th Cir. 1988) (per curiam); **Van Meter v. Morgan**, 518 F.2d 366, 368 (8th Cir. 1975) (per curiam). Magistrate Judge Boland noted that the Court may consult its own records to determine whether a pleading repeats pending or previously litigated claims. **See Duhart v. Carlson**, 469 F.2d 471 (10th Cir. 1972). Finally, Magistrate Judge Boland pointed out in the November 2 order that the claims asserted in the instant action appeared to be repetitive of Mr. Walker's claims in No. 11-cv-01676-LTB, and ordered him to show cause why this action should not be dismissed. The November 2 order warned Mr. Walker that if he failed to show cause within thirty days the action would be dismissed without further notice.

Mr. Walker has failed to show cause or otherwise communicate with the Court in any way within the time allowed. Therefore, the complaint and the action will be dismissed pursuant to § 1915 as frivolous or malicious because the asserted claims are repetitive of the claims asserted in No. 11-cv-01676-LTB.

Finally, 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 Mr. Walker files a notice of appeal he must also 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 instant action are dismissed pursuant to 28 U.S.C. § 1915 as frivolous or malicious because the asserted claims are repetitive of the claims Plaintiff, Edmond Walker, asserted in **Walker v. Stark**, No. 11-cv-01676-LTB (D. Colo. July 20, 2011). It is

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

DATED at Denver, Colorado, this 9th day of December, 2011.

BY THE COURT:

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