

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Kathleen M. Tafoya

Civil Action No. 12-cv-01015-WYD-KMT

WYATT T. HANDY, JR.,

Plaintiff,

v.

CITY OF SHERIDAN,
DET. KRISTINE BRYANT, Individual & Official, and
OFF. MIKE MONTOYA, Individual & Official,

Defendants.

ORDER

This matter is before the court on Plaintiff's "Motion for Court to Allow Payment for Transcript at Government Expense." (Doc. No. 211, filed Mar. 4, 2015.) Pursuant to 28 U.S.C. § 783(f), Plaintiff seeks to have the United States Government pay the fees for a transcript of the Motion Hearing held on February 6, 2013.

28 U.S.C. § 783(f) provides that fees for transcripts furnished in proceedings other than criminal proceedings, habeas corpus proceedings, or proceedings under 28 U.S.C. §§ 2254 and 2255 shall be paid by the United States where the person requesting the transcript is "permitted to appeal *in forma pauperis*" and "the trial judge or a circuit judge certifies that the appeal is not frivolous (but presents a substantial question)." 28 U.S.C. § 783(f).

Here, Plaintiff has not identified any reason why he requires a transcript of the February 6,

2013 Motion Hearing. *Cf. Ruark v. Gunter*, 958 F.2d 318 (10th Cir. 1992) (per curiam) (noting that an indigent § 2254 petitioner does not have a constitutional right to access a free transcript in order to search for error). The court would be warranted in denying Plaintiff’s motion on this ground alone.

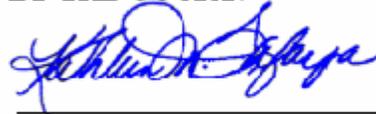
More importantly, Senior Judge Wiley Y. Daniel denied Plaintiff leave to proceed *in forma pauperis* on appeal pursuant to 28 U.S.C. § 1915 because “Plaintiff has not shown the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal.” (Order, Doc. No. 215, filed Mar. 9, 2015.) Further, there is no showing that the United States Court of Appeals for the Tenth Circuit has granted Plaintiff leave to proceed *in forma pauperis*. (Doc. No. 215.) Because leave to proceed *in forma pauperis* on appeal is a prerequisite to obtaining a free transcript under Section 783(f), Plaintiff’s Motion is properly denied.

Therefore, it is

ORDERED that Plaintiff’s “Motion for Court to Allow Payment for Transcript at Government Expense” (Doc. No. 211) is DENIED without prejudice to refile if and when the Court of Appeals for the Tenth Circuit grants Plaintiff leave to proceed *in forma pauperis* on appeal pursuant to 28 U.S.C. § 1915.

Dated this 10th day of March, 2015.

BY THE COURT:



Kathleen M. Tafoya
United States Magistrate Judge