

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-01018-BNB

RANDY KAILEY,

Plaintiff,

v.

BILL RITTER, JR.,
COLORADO DEPARTMENT OF CORRECTIONS,
ARISTEDES ZAVARAS,
ANTHONY A. DeCESARO,
PAMELA J. PLOUGH,
DAVE LINAM,
LINDA MAIFIELD,
MARK HOLLOWAY,
MIKE LEEWAYE,
ROBERT BLATNER,
"JANE" TOOMEY,
ALBERTUS GERTH, and
"JANE" HAND,

Defendants.

ORDER OF DISMISSAL

Plaintiff Randy Kailey, a *pro se* prisoner litigant, is in the custody of the Colorado Department of Corrections and currently is incarcerated at the correctional facility in Sterling, Colorado. On July 12, 2012, the Court denied Mr. Kailey leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(g), because he has filed at least three actions that were dismissed as either legally frivolous or for failure to state a claim, and he has failed to set forth specific allegations in this action of ongoing serious physical injury or a pattern of misconduct evidencing the likelihood of imminent serious physical injury.

The Court instructed Mr. Kailey to pay the entire \$350.00 filing fee within thirty days if he wished to pursue his claims in this action. The Court warned Mr. Kailey that if he failed to pay the filing fee within thirty days the Complaint and the action would be dismissed. He now has failed to pay the filing fee within the time allowed. The Complaint and the action, therefore, will be dismissed.

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order is not 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). Mr. Kailey 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 Fed. R. Civ. P. 41(b) because Mr. Kailey failed to pay the \$350.00 filing fee in full within the time allowed. It is

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

DATED at Denver, Colorado, this 20th day of August, 2012.

BY THE COURT:

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