

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-01524-BNB

EARL J. CROWNHART,

Plaintiff,

v.

THE PEOPLE OF MESA COUNTY,
THE PEOPLE OF COLORADO, and
SKIP CROWNHART,

Defendants.

ORDER DENYING LEAVE TO PROCEED IN FORMA PAUPERIS

Plaintiff Earl J. Crownhart, is incarcerated at the Colorado Mental Health Institute in Pueblo, Colorado. On June 12, 2012, Mr. Crownhart filed a Prisoner Complaint and a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915. Magistrate Judge Boyd N. Boland then entered an Order to Show Cause, on July 2, 2012, instructing Mr. Crownhart to show cause why the Court should not deny him leave to proceed pursuant to 28 U.S.C. § 1915 because he is subject to the filing restrictions in 28 U.S.C. § 1915(g). For the reasons stated below, Mr. Crownhart will be denied leave to proceed pursuant to § 1915.

In relevant part, § 1915 provides:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on

the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). Magistrate Judge Boland noted in the Order to Show Cause, Mr. Crownhart has filed more than three actions in a court of the United States while he was incarcerated or detained in any facility that were dismissed as frivolous or for failure to state a claim. *Crownhart v. Hernandez, et al.*, No. 09-cv-00357-MJW-KLM (D. Colo. Oct. 9, 2009) (dismissed for failure to state a claim under Fed. R. Civ. P. 12(b)(6)); *Crownhart v. Sullivan, et al.*, No. 08-cv-02009-ZLW (D. Colo. Nov. 26, 2008) (dismissed as legally frivolous under 28 U.S.C. § 1915(e)(2)(B)(i)), *aff'd*, No. 08-1483 (10th Cir. Oct. 5, 2009) (district court's dismissal counts as a strike under 28 U.S.C. § 1915(g) as well as the appeal); *Crownhart v. People of State of Colo., et al.*, No. 08-cv-00063-ZLW (D. Colo. Feb. 21, 2008) (dismissed as legally frivolous under 28 U.S.C. § 1915(e)(2)(B)(i)); *Crownhart v. Abbott, et al.*, No. 07-cv-02241-ZLW (D. Colo. Jan. 28, 2008) (dismissed as legally frivolous under 28 U.S.C. § 1915(e)(2)(B)(i)).

On July 11, 2012, Mr. Crownhart responded to Magistrate Judge Boland's Order to Show Cause. The Response fails to address his § 1915(g) restrictions and to state if he is in imminent danger of serious physical injury. Therefore, the Court finds that because Mr. Crownhart fails to assert that he is in imminent danger and because he has filed at least three actions in a federal court that have been dismissed as either legally frivolous or for failure to state a claim his Motion to proceed pursuant to § 1915 will be denied.

If Mr. Crownhart wishes to pursue his claims in this action he must pay the \$350.00 filing fee in full pursuant to 28 U.S.C. § 1914(a). Mr. Crownhart is reminded

that, even if he pays the filing fee in full, a review of the merits of his claims is subject to 28 U.S.C. § 1915(e)(2), and the action may be dismissed notwithstanding any filing fee if the claims are found to be frivolous or malicious, lacking in merit, or asserted against a defendant who is immune from suit. Accordingly, it is

ORDERED that the Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 is denied. It is

FURTHER ORDERED that Mr. Crownhart shall have **thirty days from the date of this Order** to pay \$345.00, which is the balance of the \$350.00 filing fee that he owes, if he wishes to pursue his claims in this action. It is

FURTHER ORDERED that if Mr. Crownhart fails to pay the \$345.00 balance within the time allowed, the Complaint and the action will be dismissed without further notice. It is

FURTHER ORDERED that the only proper filing at this time is the \$345.00 payment.

DATED at Denver, Colorado, this 7th day of August, 2012.

BY THE COURT:

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