

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Philip A. Brimmer

Civil Action No. 12-cv-02257-PAB-KLM

DEAN CARBAJAL,

Plaintiff,

v.

MICHAEL O'NEILL, Police Officer for the Denver Police Department, in his individual capacity,
JAY LOPEZ, Police Officer for the Denver Police Department, in his individual capacity,
and
LARRY BLACK, Police Officer for the Denver Police Department, in his individual capacity,

Defendants.

ORDER

This matter is before the Court on the "Second Motion for Transcripts of All Trial Proceedings and the Record for Preparation of the Pending Appeal" [Docket No. 412] filed *pro se* by Plaintiff Dean Carbajal. Mr. Carbajal alleges in the motion that his "informa pauperis status has been established since the commencement of this action and he lacks the moneys to pay for the record and transcripts." *Id.* at 3.

The Court must construe the motion liberally because Mr. Carbajal is not represented by an attorney. See *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). For the reasons stated below, the motion will be denied.

Title 28 U.S.C. § 753(f) provides in relevant part that "[f]ees for transcripts furnished in [non-criminal and non-habeas] proceedings to persons permitted to appeal in

forma pauperis shall also be paid by the United States if the trial judge or a circuit judge certifies that the appeal is not frivolous (but presents a substantial question).” A substantial question is a significant issue that is unique, unusual or reasonably debatable. See *Evans v. City of Tulsa*, 1992 WL 2882 at *3 (10th Cir. Jan. 7, 1992) (unpublished). Therefore, Mr. Carbajal is not entitled to free transcripts unless he has been allowed to proceed *in forma pauperis* on appeal and the appeal presents a significant issue that is unique, unusual, or reasonably debatable.

Mr. Carbajal has not been granted leave to proceed *in forma pauperis* on appeal. He is correct that he was granted leave to proceed *in forma pauperis* in the district court proceedings in this action. (See Docket No. 8.) However, Mr. Carbajal is a prisoner and a prisoner who appeals from the judgment in a civil action must file a new motion to proceed *in forma pauperis* on appeal along with a certified copy of his inmate trust fund account statement. See 28 U.S.C. § 1915(a). Thus, on September 24, 2015, Mr. Carbajal was informed by letter from the Office of the Clerk of the United States Court of Appeals for the Tenth Circuit that he was required either to pay the \$505.00 appellate filing fee or to file in the district court a motion seeking leave to proceed *in forma pauperis*. (See Docket No. 398.) More recently, Mr. Carbajal was directed by order entered in his pending appeal that he must either pay the full filing fee or file in the Tenth Circuit a motion to proceed *in forma pauperis* on appeal. (See Docket No. 425.) Mr. Carbajal has not filed in this Court a motion seeking leave to proceed *in forma pauperis*.

The Federal Rules of Appellate Procedure do not provide otherwise. Pursuant to Rule 24(a)(3), “[a] party who was permitted to proceed in forma pauperis in the

district-court action, . . . may proceed on appeal in forma pauperis without further authorization, unless: . . . (B) a statute provides otherwise.” In this case, because Mr. Carbajal is a prisoner, the federal *in forma pauperis* statute provides otherwise. See 28 U.S.C. § 1915(a).

In addition, even if Mr. Carbajal were granted leave to proceed *in forma pauperis* on appeal, the Court finds that he fails to demonstrate the existence of a significant issue that is unique, unusual, or reasonably debatable. Accordingly, it is

ORDERED that the “Second Motion for Transcripts of All Trial Proceedings and the Record for Preparation of the Pending Appeal” [Docket No. 412] is DENIED.

DATED February 4, 2016.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge