

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-00293-BNB

(The above civil action number must appear on all future papers sent to the court in this action. Failure to include this number may result in a delay in the consideration of your claims.)

COREY BURGESS,

Applicant,

v.

CHARLES A. DANIELS,

Respondent.

ORDER DENYING LEAVE TO PROCEED PURSUANT TO 28 U.S.C. § 1915

Applicant, Corey Burgess, is a prisoner in the custody of the United States Bureau of Prisons who currently is incarcerated at the United States Penitentiary, High Security, in Cañon City, Colorado. Mr. Burgess, acting *pro se*, submitted to the Court an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 (ECF No. 1), a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action (ECF No. 3), and a certified copy of his trust fund account statement (ECF No. 5). As part of the Court's review pursuant to D.C.COLO.LCivR 8.2, the Court has determined that the submitted documents are in proper form. For the reasons stated below, the § 1915 motion will be denied because Mr. Burgess does not qualify for leave to proceed pursuant to § 1915.

Subsection (a)(1) of 28 U.S.C. § 1915 allows a litigant to commence a lawsuit without prepayment of fees or security therefor. However, "[t]here is no absolute right to proceed in court without paying a filing fee in civil matters." *Holmes v. Hardy*, 852

F.2d 151, 153 (5th Cir. 1988); see also 28 U.S.C. § 1914(a). Proceeding *in forma pauperis* pursuant to § 1915, *i.e.* without paying a filing fee under § 1914, is a privilege extended to individuals unable to pay such a fee. See *Holmes*, 852 F.2d at 153.

The certified copy of Mr. Burgess's account statement filed on February 19, 2013, shows that he has an available balance of \$85.18 in his inmate account as of February 14, 2013. Therefore, the Court finds that Mr. Burgess has sufficient funds to pay the \$5.00 filing fee. The § 1915 motion will be denied. Mr. Burgess will be directed to pay the \$5.00 filing fee required pursuant to 28 U.S.C. § 1914 if he wishes to pursue his claims in this action.

Accordingly, it is

ORDERED that the Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action (ECF No. 3) submitted by Applicant, Corey Burgess, is denied. It is

FURTHER ORDERED that Mr. Burgess shall pay the full **\$5.00** filing fee **within thirty (30) days from the date of this order** if he wishes to pursue his claims in this action. It is

FURTHER ORDERED that, if Mr. Burgess fails to pay the \$5.00 filing fee within the time allowed, the action will be dismissed without further notice. It is

FURTHER ORDERED that the request (ECF No. 6) by Mr. Burgess for a copy of the Local Rules of Practice for this Court is denied as moot. The clerk of the Court mailed a copy of the Local Rules to Mr. Burgess on February 19, 2013. (ECF No. 6 at 1). It is

FURTHER ORDERED that the clerk of the Court supplement the docketing records for ECF No. 6 and this action to indicate that the clerk of the Court mailed a copy of the Local Rules to Mr. Burgess on February 19, 2013.

DATED at Denver, Colorado, this 22nd day of February, 2013.

BY THE COURT:

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