

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-00964-BNB

TOMMY SMITH,

Plaintiff,

v.

TIMOTHY LYDEN,  
TAMMY ANDING,  
JOE DRIVER, and  
G.E.O. CORR. OF AMERICA,

Defendants.

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ORDER OF DISMISSAL

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Plaintiff, Tommy Smith, is a prisoner in the custody of the Alaska Department of Corrections who currently is incarcerated at a private correctional facility in Hudson, Colorado. Plaintiff, acting *pro se*, originally initiated this action in the United States District Court for the District of Alaska. On April 9, 2013, the District of Alaska transferred the case to this Court pursuant to 28 U.S.C. § 1631. Upon review of Plaintiff's Complaint, Magistrate Judge Boyd N. Boland directed Plaintiff to file an Amended Complaint and assert how all named parties personally participated in violation his constitutional rights. Plaintiff was given thirty days to file the Amended Complaint.

Rather than comply with Magistrate Judge Boland's Order, Plaintiff filed a Motion to Change Venue to the Eastern District of California. Magistrate Judge Boland denied the Motion. Plaintiff contends in the Motion that because the action more properly is

filed in the Eastern District of California any requirement to amend the Complaint in this Court is moot.

After review of the Complaint, the Court finds that Magistrate Judge Boland correctly instructed Plaintiff to amend and assert personal participation. The Court also agrees that nothing in Plaintiff's Motion to Change Venue justifies a transfer to the Eastern District of California. Therefore, because Plaintiff has failed to file an Amended Complaint within the time allowed the action will be dismissed.

Finally, 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). If Plaintiff files a notice of appeal he must also 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 action are dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b) for failure to file an Amended Complaint and for failure to prosecute. It is

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

DATED at Denver, Colorado, this 30<sup>th</sup> day of May, 2013.

BY THE COURT:

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