

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-01962-BNB

KENNETH L. SHEPARD,

Plaintiff,

v.

THE COLORADO DEPARTMENT OF CORRECTIONS,

Defendant.

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ORDER OF DISMISSAL

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Plaintiff, Kenneth L. Shepard, currently is incarcerated at the Denver County Jail. He submitted *pro se* an amended Prisoner Complaint (ECF No. 6) for money damages and a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 5). Mr. Shepard has been granted leave to proceed pursuant to § 1915.

On August 15, 2013, Magistrate Judge Boyd N. Boland ordered Mr. Shepard to file within thirty days a second amended complaint that sued the proper parties, complied with the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure, and alleged the personal participation of each named defendant. Magistrate Judge Boland warned Mr. Shepard that if he failed to file a second amended complaint that complied with the August 15 order within the time allowed, the amended complaint and the action would be dismissed without further notice.

Mr. Shepard has failed within the time allowed to file a second amended complaint or otherwise communicate with the Court in any way. Therefore, the amended complaint and the action will be dismissed for Mr. Shepard's failure to file a

second amended complaint as directed within the time allowed, and for his failure to prosecute.

Finally, the Court certifies pursuant to § 1915(a)(3) that any appeal from this order would not be 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 Mr. Shepard files a notice of appeal he also must pay the full \$455.00 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 amended Prisoner Complaint (ECF No. 6) and the action are dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for the failure of Plaintiff, Kenneth L. Shepard, within the time allowed to file an amended Prisoner Complaint as directed in the order of August 15, 2013 (ECF No. 9), and for his failure to prosecute. It is

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

FURTHER ORDERED that any pending motions are denied as moot.

DATED at Denver, Colorado, this 16<sup>th</sup> day of October, 2013.

BY THE COURT:

s/Christine M. Arguello  
CHRISTINE M. ARGUELLO  
United States District Judge, for  
LEWIS T. BABCOCK, Senior Judge,  
United States District Court