

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-02979-BNB

GONZALO GOMEZ,

Applicant,

v.

LINDA MACGREW,

Respondent.

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

Applicant, Gonzalo Gomez, is a prisoner in the custody of the Federal Bureau of Prisons who currently is incarcerated at the United States Penitentiary, Victorville, in Adelanto, California. Mr. Gomez submitted *pro se* an amended Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (ECF No. 10); supporting brief titled "Motion to Vacate, Set Aside or Correct Sentence Under 28 U.S.C. § 2254" (ECF No. 12); and amended Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action (ECF No. 11), together with a certificate of the warden concerning the amount of money on deposit in his inmate trust fund account statement. After 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. Gomez 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. Gomez's account statement, filed on January 21, 2014, shows that he has an available balance of \$93.43 in his inmate account as of January 8, 2014. In the amended *in forma pauperis* motion, Mr. Gomez alleges that he has \$50.00 in his inmate account. Therefore, the Court finds that Mr. Gomez has sufficient funds to pay the \$5.00 filing fee. The amended § 1915 motion will be denied. Mr. Gomez 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 amended Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action (ECF No. 11) submitted by Applicant, Gonzalo Gomez, is denied. It is

FURTHER ORDERED that Mr. Gomez 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. Gomez 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 Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 7) is denied as moot. It is

FURTHER ORDERED that the document titled "Motion to Vacate, Set Aside or Correct Sentence Under 28 U.S.C. § 2254(b)(1)(B) (ECF No. 6), which Applicant has replaced with his amended Application for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (ECF No. 10) and supporting brief titled "Motion to Vacate, Set Aside or Correct Sentence Under 28 U.S.C. § 2254" (ECF No. 12), is denied as moot.

DATED at Denver, Colorado, this 23rd day of January, 2014.

BY THE COURT:

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