

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-03252-BNB

JEREMY PINSON,

Applicant,

v.

DAVID BERKEBILE,

Respondent.

ORDER OF DISMISSAL

Applicant, Jeremy Pinson, is a prisoner in the custody of the Federal Bureau of Prisons at the United States Penitentiary in Florence, Colorado. Applicant has filed *pro se* an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241. In an order filed on January 8, 2014, Magistrate Judge Boyd N. Boland directed Respondent to file a Preliminary Response limited to addressing the affirmative defense of exhaustion of administrative remedies.

On February 11, 2014, Respondent filed a Preliminary Response and stated that all of the five incident reports Applicant challenges in this action--I.R. Nos. 1826070, 1740713, 1740717, 2026989, and 2044118--were at issue in *Pinson v. Berkebile*, No. 12-cv-02673-LTB (D. Colo. Apr. 3, 2014), and that Applicant had failed to exhaust the administrative remedy procedure with respect to all five reports. Applicant filed a Reply on February 24, 2014, and stated that he "stipulates to dismissal as requested . . . on

the basis this case is duplicative of No. 12-cv-2673-BNB.” Reply, ECF No. 15.

This action is repetitive. At the time Applicant filed this action he had filed a previous action, *Pinson v. Berkebile*, No. 12-cv-02673-LTB (D. Colo. Apr. 3, 2014), that challenged, along with thirty-two other incident reports, the disposition of the five incident reports that he challenges in this action. Repetitious litigation of virtually identical causes of action may be dismissed as frivolous or malicious. See *Bailey v. Johnson*, 846 F.2d 1019, 1021 (5th Cir. 1988) (per curiam); *Van Meter v. Morgan*, 518 F.2d 366, 368 (8th Cir. 1975) (per curiam). Applicant’s filing of this case is another example of his abusive litigation conduct. *Pinson*, No. 12-cv-02673-LTB (dismissed for lack of merit, in part as repetitious, and for failure to exhaust; pending filing restrictions); *Pinson v. Berkebile*, 14-cv-00475-BNB (Filed Feb. 24, 2014) (repetitive litigation of issues raised in Case No. 12-cv-02673-LTB); *Pinson v. Davis*, No. 11-cv-02955-WYD (D. Colo. Aug. 8, 2012) (repeated challenge to same disciplinary proceeding; warned future malicious filings would subject him to filing restrictions); *Pinson v. Davis*, No. 11-cv-02088-WYD (D. Colo. Apr. 25, 2012) (found several of the claims legally frivolous), *dismissed on appeal*, No. 12-1214 (10th Cir. Feb. 26, 2013); *Pinson v. Davis*, No. 11-cv-01334-WYD (D. Colo. Apr. 25, 2012) (abuse of the writ for challenging same disciplinary as in previous § 2241 action and found to be borderline malicious), *dismissed on appeal*, No. 12-1215 (10th Cir. Feb. 26, 2013).

The Court further finds that each of the incident reports challenged in this action was dismissed with prejudice on the merits in Case No. 12-cv-02673-LTB. The Court, therefore, will deny this action with prejudice.

The Court also certifies pursuant to 28 U.S.C. § 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 Applicant files a notice of appeal he also must pay the full \$505 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 action is dismissed with prejudice. It is

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

DATED at Denver, Colorado, this 9th day of April, 2014.

BY THE COURT:

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