

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-00038-BNB

GERALD GARCIA, named as
GERALD/GOLDIE GARCIA,

Plaintiff,

v.

DIST. 6 POLICE DEPT., and
CSL MACDONALD,

Defendants.

ORDER OF DISMISSAL

Plaintiff, Gerald Garcia, alleges he is homeless. He filed *pro se* a Complaint (ECF No. 1) that only he signed and a Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 3).

On January 7, 2014, Magistrate Judge Boyd N. Boland entered an order (ECF No. 4) directing Mr. Garcia and Goldie Garcia, if she intended to proceed as a Plaintiff in this action, to cure within thirty days certain designated deficiencies and to file an amended Complaint that was legible and complied with the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure, sued the proper parties, and alleged the personal participation of each named Defendant. Magistrate Judge Boland warned Mr. Garcia that if he failed to comply with the January 7 order as directed within the time allowed, some claims against some Defendants, or the entire action, may be dismissed without further notice.

On February 12, 2014, the copy of the January 7 order mailed to Mr. Garcia was

returned to the Court as undeliverable. See ECF No. 5. Mr. Garcia has failed within the time allowed to cure the designated deficiencies, file an amended Complaint as directed, or otherwise communicate with the Court in any way.

In the January 7 order for an amended Complaint, Magistrate Judge Boland discussed Mr. Garcia's generally illegible Complaint, which apparently challenged his arrest but failed to assert any claims or federal statutory authority as a basis for jurisdiction or request any relief.

Magistrate Judge Boland explained that if Mr. Garcia intended to bring a civil rights action, he may not sue the Denver Police Department, named as the "Dist. 6 Police Dept." Magistrate Judge Boland also pointed out that Mr. Garcia failed to provide specifics as to what each Defendant did or failed to do to violate his constitutional rights, relying instead on vague, conclusory, and almost illegible allegations. Without specific factual assertions of Defendants' actions or inaction pertinent to his arrest, Mr. Garcia fails to comply with Rule 8 and state Defendants' personal participation in the asserted constitutional violations. The Complaint will be dismissed without prejudice for Mr. Garcia's failure to cure the designated deficiencies, file an amended Complaint that complies with Fed. R. Civ. P. 8 as directed within the time allowed, and failure to prosecute.

Mr. Garcia may, if he chooses, reassert his claims in a new and separate action that complies with the January 7 order. Mr. Garcia is warned that, even though the Court is dismissing the instant action without prejudice for failure to comply with the January 7 order, the dismissal may bar recovery if Mr. Garcia seeks to refile in this Court because the two-year statute of limitations may have expired on any claims he

intended to assert pursuant to § 1983.

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. Garcia files a notice of appeal he also must pay the full \$505.00 appellate filing fee or file a motion to proceed *in forma pauperis* in the Tenth Circuit within thirty days in accordance with Fed. R. App. P. 24.

Accordingly, it is

ORDERED that the Complaint (ECF No. 1) and the action are dismissed without prejudice pursuant to Rules 8 and 41(b) of the Federal Rules of Civil Procedure for the failure of Plaintiff, Gerald Garcia, within the time allowed, to file an amended Complaint as directed in the order of January 7, 2014 (ECF No. 4), 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. It is

FURTHER ORDERED that the clerk of the Court mail a copy of this order to Plaintiff at his last known address.

DATED at Denver, Colorado, this 19th day of February, 2014.

BY THE COURT:

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