

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-00292-BNB

CLEOTIS GRISBY,

Applicant,

v.

ROGER WERHOLTZ, Executive Director of Colorado Department of Corrections,

Respondent.

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

Applicant, Cleotis Grisby, is a prisoner in the custody of the Colorado Department of Corrections incarcerated at the Crowley County Correctional Facility in Olney Springs, Colorado. Applicant filed *pro se* a Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 and an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241. As part of the Court's review pursuant to D.C.COLO.LCivR 8.1(b), the Court has determined that the submitted documents are in proper form. The Court, however, will deny the § 1915 Motion because Applicant does not qualify for *in forma pauperis* status.

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.

Applicant's account statement shows that he has an available balance of \$674.07 in his inmate account as of February 5, 2014. Therefore, the Court finds that Applicant has sufficient funds to pay the \$5.00 filing fee. The § 1915 Motion will be denied. Applicant 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 Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915, ECF No. 3, is denied. It is

FURTHER ORDERED that Applicant shall pay the full **\$5.00** filing fee **within thirty days from the date of this Order** if he wishes to pursue his claims in this action. It is

FURTHER ORDERED that if Applicant 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 Motion for Order of Payment Plan Regarding the Filing Fee, ECF No. 5, is denied as inappropriate.

DATED at Denver, Colorado, this 20th day of February, 2014.

BY THE COURT:

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