

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-00334-BNB

DAWANE ARTHUR MALLET,

Petitioner,

v.

LT. L. FITZGERALD,
CORRECTIONAL OFFICER T. MARTINEZ, and
ADX WARDEN DAVID B. BERKEBILE,

Respondents.

ORDER OF DISMISSAL

Petitioner, Dawane Arthur Mallett, is a prisoner in the custody of the Federal Bureau of Prisons at the United States Penitentiary, Administrative Maximum, in Florence, Colorado. Mr. Mallett initiated this action by filing *pro se* a pleading (ECF No. 1) claiming that his constitutional rights have been violated. On February 5, 2014, Magistrate Judge Boyd N. Boland entered an order directing Mr. Mallett to cure certain deficiencies if he wished to pursue his claims in this action. Specifically, Magistrate Judge Boland directed Mr. Mallett to file on the proper form a Prisoner Complaint and either to pay filing and administrative fees totaling \$400.00 or to file a properly supported Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915. Mr. Mallett was warned that the action would be dismissed without further notice if he failed to cure the deficiencies within thirty days.

Mr. Mallett has failed to cure the deficiencies within the time allowed and has

failed to respond in any way to Magistrate Judge Boland's February 5 order. Therefore, the action will be dismissed without prejudice for failure to cure the deficiencies.

Furthermore, the Court 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 Petitioner 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 without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure because Mr. Mallett failed to cure the deficiencies as directed. It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied without prejudice to the filing of a motion seeking leave to proceed *in forma pauperis* on appeal in the United States Court of Appeals for the Tenth Circuit.

DATED at Denver, Colorado, this 13th day of March, 2014.

BY THE COURT:

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