

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-01015-BNB

SHAUN ERIC BROWN, also known as
SHAUN BROWN,

Plaintiff,

v.

SHERIFF TERRY MAKETA,
DEPUTY CHAD JOHNSON, and
UNKNOWN AGENTS, et al.,

Defendants.

ORDER OF DISMISSAL

Plaintiff, Shaun Brown, also known as Shaun Eric Brown, was incarcerated at the El Paso County Criminal Justice Center in Colorado Springs, Colorado, when he initiated this action by filing *pro se* a Prisoner Complaint (ECF No. 1) for money damages pursuant to 42 U.S.C. § 1983; 28 U.S.C. § 1331; and *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). Mr. Brown has been granted leave to proceed pursuant to 28 U.S.C. § 1915. He also filed an amended Prisoner Complaint (ECF No. 10).

On July 14, 2014, an order entered in a different civil action initiated by Mr. Brown, *Brown v. Maketa*, No. 14-cv-01618-BNB (D. Colo. filed June 9, 2014), was returned to the Court as undeliverable with the front of the envelope stamped “Return to Sender,” “Attempted - Not Known,” and “Unable to Forward.” ECF No. 7 at 1 in No. 14-cv-01618-BNB. The Court may take judicial notice of its own records and files that are part of the Court’s public records. See *St. Louis Baptist Temple, Inc. v. Fed. Deposit*

Ins. Corp., 605 F.2d 1169, 1172 (10th Cir. 1979).

The returned order was mailed to Mr. Brown at the same address he provided in the instant action--the El Paso County Criminal Justice Center in Colorado Springs, Colorado. In the amended Prisoner Complaint (ECF No. 10 at 2), Mr. Brown provides two different prisoner registration numbers--A00204639 for El Paso County Criminal Justice Center and 126136 for the Colorado Department of Corrections (DOC). A review of the "Finding an Inmate" tab on the DOC website, www.doc.state.co.us, reveals that Mr. Brown has been paroled to the "Southeast Region."

On July 23, 2014, Mr. Brown filed a notice of change of address (ECF No. 17) informing the Court that he currently resides at 709 South Sierra Madre, Colorado Springs, CO 80903.

Therefore, on July 24, 2014, Magistrate Judge Boyd N. Boland entered an order (ECF No. 18) informing Mr. Brown that his continuing obligation to pay the filing fee was to be determined, like any nonprisoner, solely on the basis of whether he qualified for *in forma pauperis* status. See *Whitney v. New Mexico*, 113 F.3d 1170, 1171 n.1 (10th Cir. 1997); see also *McGore v. Wrigglesworth*, 114 F.3d 601, 612-13 (6th Cir. 1997); *In re Prison Litigation Reform Act*, 105 F.3d 1131, 1138-39 (6th Cir. 1997); *McGann v. Commissioner, Soc. Sec. Admin.*, 96 F.3d 28, 29-30 (2d Cir. 1996). Magistrate Judge Boland ordered Mr. Brown to submit within thirty days on the Court-approved form an Application to Proceed in District Court Without Prepaying Fees or Costs, the *in forma pauperis* form to be used by nonprisoners. The magistrate judge informed Mr. Brown that, alternatively, he may elect to pay the \$400.00 filing fee to pursue his claims in this action.

Mr. Brown has failed within the time allowed to file on the Court-approved form

an Application to Proceed in District Court Without Prepaying Fees or Costs, as directed in the July 24 order, or otherwise communicate with the Court. The amended Prisoner Complaint and the action will be dismissed without prejudice for failure to comply with the July 24 order as directed within the time allowed, and for Mr. Brown's failure to prosecute.

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. Brown 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 United States Court of Appeals for the Tenth Circuit within thirty days in accordance with Fed. R. App. P. 24.

ORDERED that the amended Prisoner Complaint (ECF No. 10) and the action are dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for the failure of Plaintiff, Shaun Eric Brown, to submit within the time allowed on the Court-approved form an Application to Proceed in District Court Without Prepaying Fees or Costs, the *in forma pauperis* form to be used by nonprisoners, 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.

DATED at Denver, Colorado, this 5th day of September, 2014.

BY THE COURT:

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