

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-01128-BNB

GIBSON,

Plaintiff,

v.

COLORADO COURT OF APPEALS,

Defendant.

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ORDER OF DISMISSAL

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Plaintiff, a prisoner in the custody of the Colorado Department of Corrections, initiated this action by filing *pro se* a Notice of Appeal (ECF No. 1); document titled "Fed. R. Civil P. 47(b)(4) Extension of Time Limits and Excusable Neglect" (ECF No. 2); Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 3); Prisoner's Motion and Affidavit for Leave to Proceed on Appeal Pursuant to 28 U.S.C. § 1915 and Fed. R. App. P. 24 (ECF No. 4); and Opening Brief (ECF No. 5). On April 21, 2014, Magistrate Judge Boyd N. Boland entered an order directing Plaintiff to cure certain deficiencies if he wished to pursue his claims in this action. One of the deficiencies identified by Magistrate Judge Boland was the fact that Plaintiff failed to submit a Prisoner Complaint. Plaintiff was warned that the action would be dismissed without further notice if he failed to cure the deficiencies within thirty days.

Plaintiff has failed to file a Prisoner Complaint within the time allowed and has failed to respond in any way to Magistrate Judge Boland's April 21 order to cure the

deficiencies. 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 Plaintiff 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 Plaintiff 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. It is

FURTHER ORDERED that the document titled "Fed. R. Civil P. 47(b)(4) Extension of Time Limits and Excusable Neglect" (ECF No. 2), the Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 3), and the

Prisoner's Motion and Affidavit for Leave to Proceed on Appeal Pursuant to 28 U.S.C. § 1915 and Fed. R. App. P. 24 (ECF No. 4) are denied as moot.

DATED at Denver, Colorado, this 29<sup>th</sup> day of May, 2014.

BY THE COURT:

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