

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-01206-BNB

MARIO ANTON LEE,

Applicant,

v.

J. OLIVER, Warden,

Respondent.

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

Applicant, Mario Anton Lee, is a prisoner in the custody of the Federal Bureau of Prisons at the United States Penitentiary in Florence, Colorado. Applicant filed *pro se* a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action (ECF No. 4) and an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 challenging his conviction and sentence on drug-related charges in the United States District Court for the Northern District of Alabama (Southern Division) (Northern District of Alabama) in Criminal Action No. 00cr347-LSC-JHE-1.

The Court 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 \$50.54 in his inmate account as of March 26, 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 Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action (ECF No. 4) is denied. It is

FURTHER ORDERED that Applicant shall pay the full **\$5.00** filing fee **within thirty (30) 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.

DATED at Denver, Colorado, this 7th day of May, 2014.

BY THE COURT:

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