

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-01576-BNB

PEOPLE OF THE STATE OF COLORADO,

Plaintiff,

v.

STEVEN McCARY,

Defendant.

ORDER OF DISMISSAL

Defendant, Steven McCary, is a prisoner in the custody of the Colorado Department of Corrections. Mr. McCary initiated this action by filing *pro se* a “Motion for Removal of Case” (ECF No. 1) asking the Court to review his state court appeals because prison officials allegedly are denying him access to the courts in violation of his constitutional rights. The motion was construed liberally as a civil rights complaint and the instant action was commenced. On June 4, 2014, Magistrate Judge Boyd N. Boland entered an order directing Mr. McCary to cure certain deficiencies if he wished to pursue any claims. Specifically, Magistrate Judge Boland directed Mr. McCary to file on the court-approved form a Prisoner Complaint and either to pay filing and administrative fees totaling \$400.00 or to file on the court-approved form a Prisoner’s Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 along with a certified copy of his inmate trust fund account statement and an authorization to calculate and disburse filing fee payments. Mr. McCary was warned that the action

would be dismissed without further notice if he failed to cure the deficiencies within thirty days.

Mr. McCary has failed to cure the deficiencies within the time allowed, and he has failed to respond to Magistrate Judge Boland's June 4 order in any way. 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 "Motion for Removal of Case" (ECF No. 1) is denied and the action is dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure because Mr. McCary 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 17th day of July, 2014.

BY THE COURT:

s/Christine M. Arguello

CHRISTINE M. ARGUELLO
United States District Judge, for
LEWIS T. BABCOCK, Senior Judge
United States District Court