

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-02165-BNB

(The above civil action number must appear on all future papers sent to the Court in this action. Failure to include this number may result in a delay in the consideration of your claims.)

JODY JOWELL,

Applicant,

v.

RANDY LIND, and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

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

Applicant, Jody Jowell, is a prisoner in the custody of the Colorado Department of Corrections at the Arkansas Valley Correctional Facility in Ordway, Colorado. Mr. Jowell, acting *pro se*, submitted an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (ECF No. 6) and a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 5) together with a certificate of the warden as to the amount of money on deposit in his inmate trust fund account statement. As part of the Court's review pursuant to D.C.COLO.LCivR 8.1(b), the Court has determined that the submitted documents are in proper form. For the reasons stated below, the § 1915 motion will be denied because Mr. Jowell does not qualify for leave to proceed pursuant to § 1915.

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.

The certified copy of Mr. Jowell's account statement filed on August 15, 2014, shows that he has an available balance of \$463.18 in his inmate account as of August 13, 2014. Therefore, the Court finds that Mr. Jowell has sufficient funds to pay the \$5.00 filing fee. The § 1915 motion will be denied. Mr. Jowell 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 (ECF No. 5) submitted by Applicant, Jody Jowell, is denied. It is

FURTHER ORDERED that Mr. Jowell 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 Mr. Jowell fails to pay the \$5.00 filing fee within the time allowed, the action will be dismissed without further notice. It is

FURTHER ORDERED that the motion titled "Motion for Fed. Rule 60(b)(4)" (ECF No. 1) is denied as moot.

DATED at Denver, Colorado, this 26th day of August, 2014.

BY THE COURT:

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