

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-02636-GPG

LLOYD HERRERA,

Plaintiff,

v.

DR. HERR,
DEPUTY M. KIMBERLIN, and
DR. MOODY,

Defendants.

ORDER OF DISMISSAL

On September 23, 2014, Plaintiff, Lloyd Herrera, who then was incarcerated at the El Paso County Criminal Justice Center in Colorado Springs, Colorado, filed *pro se* a Prisoner Complaint (ECF No. 1) pursuant to 28 U.S.C. § 1915 for money damages.

On September 29, 2014, Magistrate Judge Boyd N. Boland ordered Mr. Herrera to file within thirty days an amended Prisoner Complaint that sued the proper parties, alleged the personal participation of each named Defendant, and complied with the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure. See ECF No. 7.

On October 14, 2014, Plaintiff filed an amended Prisoner Complaint (ECF No. 8) and tendered a second amended Prisoner Complaint (ECF No. 10). Also on October 14 he submitted a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 9) and tendered a second amended Prisoner's Motion and

Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 11), neither of which he was directed to submit. Plaintiff already was been granted leave to proceed pursuant to § 1915 on September 24, 2014. See ECF No. 5.

On October 21, 2014, Magistrate Judge Boyd N. Boland entered a minute order (ECF No. 12) denying as moot the motions for leave to proceed pursuant to § 1915 that Plaintiff submitted on October 14, 2014 (ECF Nos. 9 and 11). Magistrate Judge Boland gave Plaintiff one final opportunity to file within thirty days on the Court-approved Prisoner Complaint form a single amended Prisoner Complaint that complied with the directives of the September 29 order. Plaintiff was directed to label the single amended Prisoner Complaint as his third amended Prisoner Complaint, list in the caption all the parties he intended to sue in this action, and include all the claims he intended to assert. He was warned that failure to comply with the October 21 minute order and the September 29 order within the time allowed may result in the dismissal of the instant action.

Plaintiff has failed within the time allowed to comply with the October 21 minute order and the September 29 order, or otherwise to communicate with the Court in any way. In addition, on December 1, 2014, mail sent to Mr. Herrera at the El Paso County Justice Center was returned to the Court as undeliverable. Plaintiff has failed to provide a new address as required by the Local Rules of Practice of this Court. See D.C.COLO.LAttyR 5(c).

Therefore, the amended Prisoner Complaint and the action will be dismissed without prejudice for Mr. Herrera's failure to file an single amended Prisoner Complaint as directed within the time allowed, and for his 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. Herrera 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.

Accordingly, it is

ORDERED that the amended Prisoner Complaint (ECF No. 8) and the action are dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for the failure of Plaintiff, Lloyd Herrera, to file within the time allowed an amended Prisoner Complaint as directed in the order of September 29, 2014, and minute order of October 21, 2014, 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 4th day of December, 2014.

BY THE COURT:

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