

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-02810-GPG

SHAUN HARPER,

Plaintiff,

v.

SHARON PHILLIPS,
DR. HODGE,
MEDICAL STAFF OF SAN CARLOS,
CENTENNIAL CORRECTIONAL FACILITY, and
MISTY ZADE,

Defendants.

ORDER OF DISMISSAL

Plaintiff, Shaun Harper, is a prisoner in the custody of the Colorado Department of Corrections who currently is incarcerated at the San Carlos Correctional Facility in Pueblo, Colorado. Mr. Harper initiated the instant action by submitting *pro se* a Prisoner Complaint (ECF No. 1) pursuant to 42 U.S.C. § 1983, among other statutes, and an incomplete Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 3). The Court reviewed the documents and determined they were deficient. Therefore, on October 27, 2014, Magistrate Judge Boyd N. Boland entered an order (ECF No. 5) directing Mr. Harper to cure certain enumerated deficiencies in the case within thirty days if he wished to pursue his claims.

The October 27 order pointed out that Mr. Harper failed to submit either the \$400.00 filing fee or submit a fully completed Prisoner's Motion and Affidavit for Leave

to Proceed Pursuant to 28 U.S.C. § 1915 on the proper, Court-approved form, i.e., the current form revised October 1, 2012, with an authorization and certificate of prison official, together with a certified copy of his trust fund account statement for the six-month period immediately preceding this filing obtained from the appropriate prison official. The October 27 order also noted that the names in the caption to the § 1915 motion and affidavit did not match the names in the caption to the Prisoner Complaint. The October 27 order further directed Mr. Harper to submit an amended Prisoner Complaint on the proper, Court-approved form that complied with the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure and the legibility requirements of Rule 10.1 of the Local Rules of Practice for this Court. The October 27 order directed Mr. Harper to obtain, with the assistance of his case manager or the facility's legal assistant, the Court-approved forms for filing a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 and a Prisoner Complaint, and to use those forms in curing the designated deficiencies and filing an amended Prisoner Complaint that complied with Fed. R. Civ. P. 8. The October 27 order warned him that if he failed to cure the designated deficiencies and file an amended Prisoner Complaint within thirty days, the Prisoner Complaint and the action may be dismissed without further notice.

On October 31, 2014, Mr. Harper tendered an amended Prisoner Complaint (ECF No. 7) pursuant to 42 U.S.C. § 1983. However, he failed to cure all the designated deficiencies within the time allowed by filing on the proper, Court-approved form a fully completed Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to

28 U.S.C. § 1915 together with a certified copy of his trust fund account statement for the six-month period immediately preceding this filing.

As a result, Mr. Harper has failed to cure the designated deficiencies as directed. Therefore, the Prisoner Complaint, tendered amended Prisoner Complaint, and the action will be dismissed without prejudice for Mr. Harper's failure to cure all the designated deficiencies as directed within the time allowed.

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. Harper 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. 27.

Accordingly, it is

ORDERED that the Prisoner Complaint (ECF No. 1), tendered amended Prisoner Complaint (ECF No. 7), and the action are dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for the failure of Plaintiff, Shaun Harper, within the time allowed to cure the deficiencies designated in the order to cure of October 27, 2014. 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