

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-00741-GPG

WILLIAM GILMORE,

Plaintiff,

v.

TRUDY SICOTTE, PA,
DAVID TESSIER, HCA, and
FREMONT CORRECTIONAL FACILITY

Defendants.

REVISED ORDER TO DISMISS IN PART AND TO DRAW CASE

Plaintiff William Gilmore is in the custody of the Colorado Department of Corrections and currently is incarcerated at the Fremont Correctional Facility in Cañon City, Colorado. Plaintiff, acting *pro se*, initiated this action by filing a Prisoner Complaint pursuant to 42 U.S.C. § 1983, and a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915. Plaintiff has been granted leave to proceed pursuant to § 1915.

Plaintiff asserts that his constitutional rights have been violated because Defendants Trudy Sicotte and David Tessier failed to provide adequate medical treatment for Plaintiff's broken ankle. Plaintiff seeks money damages. These claims asserted against Defendants Trudy Sicotte and David Tessier will be drawn to a presiding judge and when applicable to a magistrate judge.

Defendant Fremont Correctional Facility is immune from suit. The State of Colorado and its agencies are protected by Eleventh Amendment immunity. See *Will v.*

Michigan Dep't of State Police, 491 U.S. 58, 66 (1989); *Meade v. Grubbs*, 841 F.2d 1512, 1525-26 (10th Cir. 1988). "It is well established that absent an unmistakable waiver by the state of its Eleventh Amendment immunity, or an unmistakable abrogation of such immunity by Congress, the amendment provides absolute immunity from suit in federal courts for states and their agencies." *Ramirez v. Oklahoma Dep't of Mental Health*, 41 F.3d 584, 588 (10th Cir. 1994), overruled on other grounds by *Ellis v. University of Kan. Medical Center*, 163 F.3d 1186, 1194-97 (10th Cir. 1998). The State of Colorado has not waived its Eleventh Amendment immunity, see *Griess v. Colorado*, 841 F.2d 1042, 1044-45 (10th Cir. 1988), and congressional enactment of 42 U.S.C. § 1983 did not abrogate Eleventh Amendment immunity, see *Quern v. Jordan*, 440 U.S. 332, 340-345 (1979). Accordingly, it is

ORDERED THAT THE CLERK OF THE COURT IS DIRECTED TO ENTER THIS REVISED ORDER AS FILED ON APRIL 14, 2015, AND VACATE THE ORDER ENTERED IN ECF NO. 5. It is

FURTHER ORDERED that Defendant Fremont Correctional Facility will be dismissed from the action. It is

FURTHER ORDERED that the claims asserted against Defendants Trudy Sicotte and David Tessier shall be drawn to a presiding judge and when applicable to a magistrate judge.

DATED at Denver, Colorado, this 27th day of April, 2015.

BY THE COURT:

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