

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-01179-GPG

LEROY BUHL,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF PRISONS,
JOHN DIGNAM,
C. ALVAREZ,
D. PAYNE,
M. THOMPSON,
D. RHODES,
C. COOK,
E. SVENSVOLD,
G. POLAND, and
JOHN OLIVER,

Defendants.

ORDER OF DISMISSAL

Plaintiff Leroy Buhl is in the custody of the Federal Bureau of Prisons at the United States Penitentiary, Administrative Maximum, in Florence, Colorado. Mr. Buhl and two other inmates originally initiated this action by filing a complaint in the United States District Court for the District of Columbia claiming violations of the Privacy Act, the Federal Tort Claims Act, the Tucker Act, and the Eighth Amendment. The District of Columbia transferred the case to this Court on May 29, 2015, pursuant to 28 U.S.C. §§ 1404 and 1406(a).

The Court dismissed Plaintiffs Mikeal Stine and Jeremy Pinson on June 10, 2015, and ordered Mr. Buhl to file his claims on a Court-approved form and either to submit a

Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C.

§ 1915 or in the alternative to pay the \$400 filing fee in full. Mr. Buhl filed a Prisoner Complaint and a 28 U.S.C. § 1915 Motion and Affidavit on July 31, 2015. Magistrate Judge Gordon P. Gallagher then, after review of the documents, ordered Mr. Buhl to respond and show cause why leave to proceed *in forma pauperis* pursuant to § 1915 should not be denied because he is subject to the filing restriction stated in § 1915(g).

On August 28, 2015, Mr. Buhl filed a Response to the Order to Show Cause. On September 29, 2015, the Court entered an order and found that nothing Mr. Buhl asserts against Defendants United States Department of Justice, Federal Bureau of Prisons, C. Alvarez, M. Thompson, D. Rhodes, E. Svensvold, G. Poland, and John Oliver states imminent danger of serious physical injury. Defendant John Dignam is not listed in the September 29, 2015 Order along with other Defendants noted above; but like the other Defendants nothing Mr. Buhl asserts against Defendant Dignam states a claim of imminent danger of serious physical injury.

The Court also found that Mr. Stine's Sworn Declaration may state a specific incident where Mr. Buhl may have been threatened by other inmates based on Defendants Clay and Payne's actions, but the threat was only for when Mr. Buhl would be placed in the step-down program, which such placement currently has been denied. Finally, the Court found any other claims about threats by other inmates against Mr. Buhl were conclusory and vague, and as a result the claims against Defendants Clay and Payne were insufficient to demonstrate imminent danger of serious physical injury.

Based on the Court's findings, Mr. Buhl was denied leave to proceed pursuant to 28 U.S.C. § 1915. The Court directed Mr. Buhl to pay the \$400 filing fee in full within

thirty days. Mr. Buhl now has failed to comply with the September 29, 2015 Order within the time allowed. The Court, therefore, will dismiss this action.

The Court also certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order is not 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. Buhl files a notice of appeal he 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 Complaint and action are dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b) because Mr. Buhl failed to pay the filing fee in full within the time allowed. It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied.

DATED at Denver, Colorado, this 4th day of November, 2015.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, Senior Judge
UNITED STATES DISTRICT COURT