

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-01630-GPG

ANDRE BARTON,

Plaintiff,

v.

WESTMINSTER PAROLE, et al.,

Defendants.

ORDER OF DISMISSAL

Plaintiff, Andre Barton, is a prisoner in the custody of the Colorado Department of Corrections. Mr. Barton initiated this action by filing *pro se* a motion (ECF No. 1). The instant action was commenced and, on July 31, 2015, Magistrate Judge Gordon P. Gallagher entered an order directing Mr. Barton to cure certain deficiencies if he wishes to pursue his claims. Specifically, Magistrate Judge Gallagher directed Mr. Barton to file on the proper forms a Prisoner Complaint and a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 and to submit a certified copy of his inmate trust fund account statement and an authorization to calculate and disburse filing fee payments. Mr. Barton was warned that the action would be dismissed without further notice if he failed to cure the deficiencies within thirty days.

In response to the order directing him to cure deficiencies Mr. Barton filed on August 24, 2015, a motion for appointment of counsel (ECF No. 6), a motion for extension of time (ECF No. 7), a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28

U.S.C. § 1915 (ECF No. 8), a motion for release from prison (ECF No. 9), and a letter (ECF No. 10). On September 11, 2015, he filed a notice of settlement request (ECF No. 11), a notice to the clerk of the court (ECF No. 12), and a motion requesting a settlement due to false imprisonment (ECF No. 13).

On September 17, 2015, Magistrate Judge Gallagher entered a minute order (ECF No. 14) advising Mr. Barton that he had not cured all of the deficiencies because he had not filed a pleading that provides a short and plain statement of the claims he seeks to pursue in this action. Magistrate Judge Gallagher also granted the motion for extension of time and directed Mr. Barton to cure this remaining deficiency within thirty days. Finally, Magistrate Judge Gallagher advised Mr. Barton as follows regarding the type of pleading he must file:

If Plaintiff is challenging the validity of a state court criminal conviction or sentence, he must file an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254; if Plaintiff is challenging the execution of a sentence, he must file an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241; if Plaintiff is not seeking habeas corpus relief, he must file a Prisoner Complaint.

(ECF No. 14.) Mr. Barton again was warned that the action would be dismissed without further notice if he failed to file a pleading on the proper form within the time allowed.

Mr. Barton has not cured all of the deficiencies because he has not filed a pleading that provides a short and plain statement of the claims he seeks to pursue in this action. Therefore, the action will be dismissed without prejudice for failure to cure all of the deficiencies.

The Court also certifies pursuant to 28 U.S.C. § 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 Plaintiff files a notice of appeal he also 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

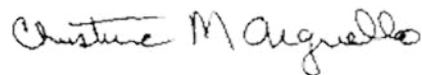
ORDERED that the action is dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure because Mr. Barton failed to cure all of the deficiencies as directed. It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied without prejudice to the filing of a motion seeking leave to proceed *in forma pauperis* on appeal in the United States Court of Appeals for the Tenth Circuit. It is

FURTHER ORDERED that the pending motions are denied as moot.

DATED at Denver, Colorado, this 26th day of October, 2015.

BY THE COURT:



CHRISTINE M. ARGUELLO
United States District Judge, for
LEWIS T. BABCOCK, Senior Judge
United States District Court