

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-02283-GPG

ANDREW WOLTERS,

Plaintiff,

v.

BOULDER COUNTY DISTRICT ATTORNEY,

Defendant.

ORDER OF DISMISSAL

On November 18, 2015, the Court denied Plaintiff leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 in this action because he is subject to the filing restriction in § 1915(g). The Court also ordered Plaintiff to pay the full amount of \$400.00 (\$350.00 filing fee, plus a \$50.00 administrative fee) within thirty days if he wishes to pursue his claims. The Court warned Plaintiff that the action would be dismissed without further notice if he failed to pay the full amount of \$400.00 within thirty days.

Plaintiff has failed within the time allowed to pay the filing and administrative fees as directed. Instead, on December 8, 2015, Plaintiff filed a Request for Extension of Time (ECF No. 13) seeking an extension of time to file a motion to reconsider and on December 28, 2015, he filed a Motion for Rehearing or Rehearing En Banc (ECF No. 15) asking the Court to reconsider the order denying him leave to proceed *in forma pauperis*. The motion for an extension of time (ECF No. 13) will be granted and the motion to reconsider will be denied. For the reasons discussed the Court's November 18 order,

the Court remains convinced that the dismissal of *Wolters v. Hunter*, No. 07-cv-02290-WYD-CBS (D. Colo. Mar. 2, 2009), *aff'd*, 330 F. App'x 769 (10th Cir. 2009), counts as a strike for the purposes of § 1915(g). The Court also rejects Plaintiff's argument that he can establish imminent danger of serious physical injury that satisfies the exception to the filing restriction in § 1915(g) by pointing to alleged threats, abuse, and assaults that are not related to the specific claim for relief he is asserting in his complaint against the Boulder County District Attorney in this action. See *Burghart v. Corrs. Corp. of America*, 350 F. App'x 278, 279-80 (10th Cir. 2009) (concluding inmate's allegations of imminent danger were not credible because he "has not explained how the rights violations alleged in his original complaint will produce these injuries").

The action will be dismissed for failure to pay the required filing and administrative fees. Furthermore, the Court 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 Plaintiff's Request for Extension of Time (ECF No. 13) is granted and Plaintiff's Motion for Rehearing or Rehearing En Banc (ECF No. 15) is denied. It is

FURTHER ORDERED that the Prisoner Complaint and the action are dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure because

Plaintiff failed to pay the required filing and administrative fees 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.

DATED at Denver, Colorado, this 7th day of January, 2016.

BY THE COURT:

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