

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-02853-GPG

MARCUS ANDREW BURRAGE,

Plaintiff,

v.

THERESA COZZA-RHODES,

Defendant.

ORDER OF DISMISSAL

Plaintiff, Marcus Andrew Burrage, is a federal prisoner incarcerated at the United States Penitentiary in Florence, Colorado. He initiated this action by filing an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 and a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action.

On January 5, 2016, Magistrate Judge Gordon P. Gallagher reviewed Applicant's filings and determined that the *in forma pauperis* motion was deficient because it failed to include a certificate showing the current balance in Mr. Burrage's inmate trust fund account. (See ECF No. 4). Magistrate Judge Gallagher ordered Applicant to submit the missing document within 30 days of the January 5 Order. (*Id.*). On February 16, 2016, Magistrate Judge Gallagher issued a minute order directing Mr. Burrage to file a certificate showing the balance in his inmate trust fund account, or pay the \$5.00 filing fee, within 30 days. (ECF No. 5). Magistrate Judge Gallagher warned Applicant in the January 5 and February 16 orders that failure to comply would result in dismissal of this

action without further notice. (See ECF Nos. 4, 5).

Mr. Burrage has now failed to comply with the January 5 and February 16 orders. Furthermore, he has not communicated with the Court since he initiated this action on December 30, 2015. Accordingly, it is

ORDERED that this action is DISMISSED without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for the failure of Applicant, Marcus Andrew Burrage, to comply with the January 5, 2016 Order Directing Applicant to Cure Deficiency and with the February 16, 2016 minute order. It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied for the purpose of appeal. 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. See *Coppedge v. United States*, 369 U.S. 438 (1962). If Mr. Burrage files a notice of appeal he must also 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. It is

FURTHER ORDERED that all pending motions are DENIED as moot.

DATED April 1, 2016, at Denver, Colorado.

BY THE COURT:

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