

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 16-cv-00413-GPG

MARQUISE DEMONT HARRIS,

Plaintiff,

v.

ADAMS COUNTY SHERIFF'S DEPARTMENT, sued in official and individual capacity,
SHERIFF MICHAEL MICINTOSH, sued in official and individual capacity,
DEPUTY SHERIFF JOHN DOE, sued in official and individual capacity,
S. FULLER, sued in official and individual capacity, and
JOHN DOE, sued in official and individual capacity,

Defendants.

ORDER OF DISMISSAL

Plaintiff, Marquise Demont Harris, has filed *pro se* a Complaint (ECF No. 1) asserting claims that arose during his confinement at the Adams County Detention Facility in Brighton, Colorado. Mr. Harris also has filed an Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form) (ECF No. 3). The Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form) will be granted.

Pursuant to § 1915(e)(2)(B)(i), the Court must dismiss the action if the claims Mr. Harris asserts are frivolous or malicious. A legally frivolous claim is one in which the plaintiff asserts the violation of a legal interest that clearly does not exist or asserts facts that do not support an arguable claim. See *Neitzke v. Williams*, 490 U.S. 319, 327-28 (1989). For the reasons stated below, the Court will dismiss the action as legally frivolous and malicious.

The Court must construe the Complaint liberally because Mr. Harris is not represented by an attorney. See *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). If the Complaint reasonably can be read “to state a valid claim on which the plaintiff could prevail, [the Court] should do so despite the plaintiff’s failure to cite proper legal authority, his confusion of various legal theories, his poor syntax and sentence construction, or his unfamiliarity with pleading requirements.” *Hall*, 935 F.2d at 1110. However, the Court should not be an advocate for a *pro se* litigant. See *id.*

Mr. Harris claims he was prevented from exercising his religious rights while he was confined at the Adams County Detention Facility from June 19, 2015, through July 18, 2015. He asserts a number of constitutional and state law claims premised on the same factual allegations that he was denied his Holy Quran upon arriving at the jail, he was unable to fast during Ramadan because meals were served at inappropriate times, and he was denied the opportunity to participate in prayer meetings. Mr. Harris asserts the same claims in another pending civil action. See *Harris v. Adams County Sheriff’s Dept.*, No. 16-cv-00160-REB-MEH (D. Colo. filed Jan. 21, 2016). With the exception of one unidentified John Doe, the Defendants in this action are the same Defendants in case number 16-cv-00160-REB-MEH.

“Repetitious litigation of virtually identical causes of action may be dismissed under § 1915 as frivolous or malicious.” *McWilliams v. Colorado*, 121 F.3d 573, 574 (10th Cir. 1997) (quotation marks and alteration omitted). To determine whether a pleading repeats pending or previously litigated claims, the Court may consult its own records.

See *Duhart v. Carlson*, 469 F.2d 471, 473 (10th Cir. 1972). The Court has consulted its records and finds that the claims Mr. Harris asserts in the instant action are identical to the claims he is pursuing in case number 16-cv-00160-REB-MEH. Therefore, the instant action is repetitive and will be dismissed as frivolous and malicious.

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 Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form) (ECF No. 3) is granted. It is

FURTHER ORDERED that the Complaint and the action are dismissed as legally frivolous and malicious pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). 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 24TH day of February, 2016.

BY THE COURT:

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