Villanueva v. Hoffman et al Doc. 9

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII

) CIV. NO. 14-00461 SOM/KSC
) ORDER DENYING RECONSIDERATION
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))

ORDER DENYING RECONSIDERATION

On October 16, 2014, the court denied Plaintiff's in forma pauperis application and dismissed this prisoner civil rights action without prejudice pursuant to 28 U.S.C. § 1915(g). Plaintiff was told he could reopen the case within twenty-eight days, or commence a new action at his discretion, with concurrent payment of the filing fee. See Doc. No. 3, PageID #36.

On November 20, 2014, Plaintiff moved to proceed without payment of costs or fees as a veteran, and moved again to proceed *in forma pauperis*. Doc. Nos. 5, 6. The court denied these requests on November 21, 2014. Doc. No. 7.

Plaintiff now moves for reconsideration. Doc. No. 8. He apologizes if he missed the twenty-eight day deadline to reopen this case, but explains that the mail to Arizona is very

slow. Plaintiff then authorizes the prison to mail a copy of his prison trust account statement to the court, and to disburse partial payments to the court pursuant to 28 U.S.C. § 1915(b) (detailing the procedures for deducting payment when a prisoner is granted in forma pauperis status). Plaintiff provides no reason for the court to reconsider its two decisions to deny in forma pauperis status, Doc. Nos. 3, 7, or its decision to deny waiver of fees for him as a veteran, Doc. No. 7. Plaintiff apparently misunderstands the import of these decisions.

Plaintiff may not proceed in forma pauperis in this action because he has accrued more than three strikes pursuant to 28 U.S.C. § 1915(g) and he does not claim that he is in imminent danger of serious physical injury. The time has passed for reopening this case by submitting full payment of the filing fee. Plaintiff may raise his claims in a new action at any time with

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¹ Mail from Plaintiff has taken an average of four days to reach the court. Plaintiff was also aware of the twenty-eight day deadline no later than November 16, 2014, the day he gave his second *in forma pauperis* request and waiver of fees motion to prison authorities for mailing to the court. See Doc. No. 5-1 (mailing documents).

concurrent payment of the \$400.00 filing fee.² Plaintiff's Motion for Reconsideration is DENIED.

Plaintiff's Motions are DENIED.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, December 8, 2014.



/s/ Susan Oki Mollway
Susan Oki Mollway
Chief United States District Judge

Villanueva v. Hoffman, 1:14-cv-00461 SOM/KSC; PSA/2014recon/Villanueva 14-461(dny);
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² Plaintiff complains that the court failed to inform him of the cost for initiating a civil action. The October 16, 2014, Dismissal Order clearly states: "Villanueva may . . . reassert his claims in a new action with concurrent payment of the \$400.00 filing fee." Doc. No. 3, PageID #36.