

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

CHRISTOPHER LEE CRESPIN,

Plaintiff,

vs.

No. CV 18-00260 WJ/CG

ALBUQUERQUE POLICE DEPARTMENT,
SECOND JUDICIAL DISTRICT COURT,
NEW MEXICO PUBLIC DEFENDER DEPARTMENT,

Defendants.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

THIS MATTER is before the Court under Fed. R. Civ. P. 41(b) on the Civil Rights Complaint Pursuant to 42 U.S.C. § 1983 filed by Plaintiff Christopher Lee Crespin on March 19, 2018. (Doc. 1). The Court will dismiss the Complaint without prejudice for failure to comply with 28 U.S.C. §§ 1914 and 1915, failure to comply with Court orders, and failure to prosecute this case.

Plaintiff, Christopher Lee Crespin, filed this civil rights proceeding under 42 U.S.C. § 1983 on March 19, 2018. (Doc. 1). Plaintiff did not pay the \$400.00 filing fee or submit an application to proceed without prepayment of fees or costs pursuant to 28 U.S.C. § 1915. On March 20, 2018, the Court ordered Plaintiff to cure this deficiency within 30 days by either paying the \$400.00 filing fee or submitting an application to proceed *in forma pauperis*. (Doc. 2). The Order advised Plaintiff that, if he failed to cure the deficiency within the 30-day time period, the Court could dismiss this proceeding without further notice. (Doc. 2 at 1). The Court also sent Plaintiff the forms for submitting an application under § 1915. (Doc. 2 at 2). On April 11, 2018, Plaintiff sent the

Court a Financial Statement, showing an ending balance in his inmate account of \$272.13. (Doc. 4). However, more than 30 days elapsed after entry of the Court's Order to Cure Deficiency and Plaintiff did not pay the \$400 filing fee or submit an application to proceed under § 1915.

On August 20, 2018, the Court entered an Order to Show Cause. (Doc. 7). The Order directed Plaintiff Crespin to show cause within 21 days why the case should not be dismissed for failure to comply with the Court's March 20, 2018 Order. (Doc. 7 at 2). The Order to Show Cause again advised Crespin that, if he did not respond to the Court's Order, the case could be dismissed without further notice. (Doc. 7 at 2). Crespin did not respond to the Court's August 20, 2018 Order to Show Cause. Crespin did, however, send the Court another financial statement showing deposits to his inmate account totaling \$254.70 from July 2018 to February 2019. (Doc. 13).

To date, Plaintiff Crespin has failed to pay the filing fee or to submit an application to proceed *in forma pauperis*. The Court takes judicial notice that Plaintiff Crespin's Complaint in *Crespin v. Metropolitan Detention Center*, No. CV 18-00227 JCH/KRS was dismissed for substantially the same failure to pay the filing fee or submit an *in forma pauperis* application. See CV 18-00227 Doc. 10; *Duhart v. Carlson*, 469 F.2d 471, 473 (10th Cir. 1972).

Under 28 U.S.C. §§ 1914(a) and 1915(a), the Court is required collect the federal filing fee from the Plaintiff or authorize Plaintiff to proceed without prepayment of the fee. Plaintiff has failed to either pay the \$400.00 filing fee or submit an application to proceed under § 1915. The Court ordered Crespin to either pay the filing fee or submit an application to proceed under § 1915. The Court also provided Crespin with the § 1915 application form. (Doc. 2). Crespin did not pay the fee or file an application to proceed. When the Court ordered Crespin to show cause why the case should not be dismissed, he failed to comply with the requirements of 28 U.S.C. §§ 1914 and 1915 and with the Court's August 20, 2018 Order to Show Cause.

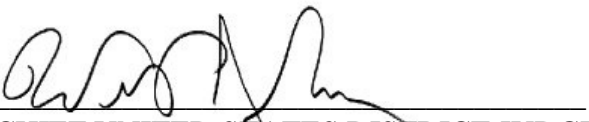
The Court may dismiss an action under Fed. R. Civ. P. 41(b) for failure to prosecute, to comply with the statutes or rules of civil procedure, or to comply with court orders. *See Olsen v. Mapes*, 333 F.3d 1199, 1204, n. 3 (10th Cir. 2003). Therefore, the Court will dismiss this civil proceeding pursuant to Rule 41(b) for failure to comply with 28 U.S.C. §§ 1914, 1915, failure to comply with the Court's Orders of March 20, 2018 and August 20, 2018, and failure to prosecute this proceeding.

Also before the Court is Defendant Albuquerque Police Department's Motion to Dismiss (Doc. 9). The Court will deny the Motion as moot in light of this Memorandum Opinion and Order.

IT IS ORDERED:

(1) Defendant Albuquerque Police Department's Motion to Dismiss (Doc. 9) is **DENIED** as moot; and

(2) the Civil Rights Complaint Pursuant to 42 U.S.C. § 1983 filed by Plaintiff Christopher Lee Crespín on March 19, 2018 (Doc. 1) is **DISMISSED** without prejudice under Fed. R. Civ. P. 41(b) for failure to prosecute or to comply with 28 U.S.C. §§ 1914 and 1915 and with the Court's March 20, 2018 and August 20, 2018 Orders.



CHIEF UNITED STATES DISTRICT JUDGE