

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

June 27, 2023

Christopher M. Wolpert
Clerk of Court

MARVIN T. BOYD, JR.,

Plaintiff - Appellant,

v.

DENVER SHERIFF’S DEPARTMENT,

Defendant - Appellee.

No. 23-1094
(D.C. No. 1:22-CV-02370-LTB)
(D. Colo.)

ORDER AND JUDGMENT*

Before **MATHESON, BRISCOE, and EID**, Circuit Judges.

Marvin T. Boyd, Jr. appeals pro se¹ from a district court order dismissing his complaint for failure to cure deficiencies. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm. We also deny his request to proceed on appeal *in forma pauperis* (“*ifp*”).

* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties’ request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

¹ Because Mr. Boyd appears pro se, “we liberally construe his filings, but we will not act as his advocate.” *James v. Wadas*, 724 F.3d 1312, 1315 (10th Cir. 2013).

I. BACKGROUND

Mr. Boyd initiated this action in September 2022 while incarcerated at the Denver County Jail. His “Prisoner Complaint” asserted claims against a state public defender, a prosecutor, a judge, ambulance EMT workers, peace officers, a court clerk, and the Denver Sheriff’s Department. ROA at 8. He alleged that he is an “innocent federal seal holder” and cannot be arrested or go to jail unless he is convicted of a crime. *Id.* at 9-10. In response, the district court issued two orders to cure deficiencies in the complaint—failure to provide a copy of his prisoner’s trust fund statement and failure to identify his custody status.²

On December 14, 2022, Mr. Boyd filed an “Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254,” and a “Prisoner’s Motion” to proceed *ifp*. ROA at 119. The court issued a third order directing him to cure deficiencies—failure to provide a certificate showing the current balance in his prison account, and failure to match the names in the caption with the named defendants.³

On January 17, 2023, Mr. Boyd filed a “Prisoner Complaint,” an “Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241,” and two “Prisoner’s Motions” to

² See Order Directing Plaintiff to Cure Deficiencies, *Boyd v. Ambulance EMT Workers*, No. 22-cv-02370 (D. Colo. Sept. 15, 2022), ECF No. 3; Second Order Directing Plaintiff to Cure Deficiencies, *id.* (D. Colo. Nov. 21, 2022), ECF No. 16.

³ ROA at 119; Third Order Directing Applicant to Cure Deficiencies, *Boyd*, No. 22-cv-02370 (D. Colo. Dec. 29, 2022), ECF No. 32.

proceed *ifp*, with one specific to habeas actions. *Id.* On January 24, 2023, the court issued a fourth order directing Mr. Boyd to cure deficiencies:

If Applicant wishes to pursue claims in this action, he must file **either** a Prisoner Complaint on the court-approved form **or** an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 on the court-approved form, and pay the applicable filing fee or file **either** a Prisoner’s Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 on the court-approved form **or** a Prisoner’s Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action on the court-approved form.

Id. at 120 (quotations omitted). The order also stated that Mr. Boyd “**may not file both a Prisoner Complaint and a habeas corpus application in the same action. He must file one or the other.**” *Id.* (quotations omitted). The order specified that Mr. Boyd would “be given **one final opportunity** to cure the deficiencies if he wishes to pursue any claims,” and failure to cure the deficiencies “**within thirty (30) days from the date of this order**” would result in dismissal. *Id.* (quotations omitted).

In response to this fourth order, Mr. Boyd submitted an affidavit, four motions, a notice, and a letter. The court, in dismissing the action, explained that none of these filings “cured the specified deficiencies or addressed the January 24 order to cure in any coherent way.” *Id.* (citations omitted). The court found that Mr. Boyd “failed to cure the deficiencies within the time allowed” and dismissed the case without prejudice. *Id.* To the extent Mr. Bond’s filings attempted to assert a civil complaint, the court certified that any appeal would not be taken in good faith under 28 U.S.C. § 1915(a)(3), and it denied leave to proceed *ifp* on appeal. To the extent Mr. Bond’s filings attempted to petition for habeas relief under 28 U.S.C. § 2241, the court denied a certificate of appealability

because Mr. Boyd “has not made a substantial showing of the denial of a constitutional right.” *Id.* at 121.

On March 27, 2023, Mr. Boyd filed a document in this court that we treated as a misdirected notice of appeal and transmitted it to the district court under Federal Rule of Appellate Procedure 4(d).

II. DISCUSSION

A district court may dismiss an action for failure to comply with a court order. *See* Fed. R. Civ. P. 41(b); *Olsen v. Mapes*, 333 F.3d 1199, 1204 n.3 (10th Cir. 2003). We review such a dismissal for abuse of discretion. *See Nasious v. Two Unknown B.I.C.E. Agents*, 492 F.3d 1158, 1161 (10th Cir. 2007).

The district court dismissed Mr. Boyd’s action because he did not comply with the court’s fourth order to cure deficiencies. In his appeal brief, Mr. Boyd largely focuses on the merits of his complaint and habeas application rather than the basis for the district court’s dismissal. *See* Aplt. Br. at 2-3. He also seems to challenge the court’s conclusion that he failed to comply with its fourth order to cure deficiencies within 30 days of January 24, 2023. He asserts that “he got the paperwork in time” to the court, because it “was sent out within the 30 days.” *Id.* at 4.

Although Mr. Boyd filed documents within 30 days of the order, the court ordered him to cure deficiencies. And “[h]is subsequent filings were unresponsive to the [] judge’s order because they failed even to address, much less cure, the deficiency identified” *McDonald v. Colorado’s 18th Jud. Dist.*, 668 F. App’x 849, 850 (10th Cir. 2016) (unpublished) (cited for persuasive value under Fed. R. App. P. 32.1;

10th Cir. R. 32.1(A)). Specifically, the court ordered him to choose to file “either a Prisoner Complaint on the court-approved form or an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 on the court-approved form,” accompanied by the appropriate *ifp* application, ROA at 120 (quotations omitted), and he failed to do so.

Because Mr. Boyd failed to cure the deficiencies, and because he makes no other argument suggesting that he complied with the district court’s order, Mr. Boyd has failed to demonstrate that the district court abused its discretion in dismissing his action without prejudice.

III. CONCLUSION

We affirm the district court’s dismissal order. We deny Mr. Boyd’s motion to proceed *ifp* and grant his motion to add evidence.⁴

Entered for the Court

Scott M. Matheson, Jr.
Circuit Judge

⁴Although in his brief Mr. Boyd does not ask for a certificate of appealability to appeal the dismissal of a habeas petition, *see* 28 U.S.C. § 2253(c)(1)(A), to the extent he is seeking one, we deny such a request because he has not “made a substantial showing of the denial of a constitutional right,” *id.* § 2253(c)(2), or “that reasonable jurists could debate whether . . . the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further,” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quotations omitted).