

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 07-cv-00639-BNB

CARL H. WADE,

Applicant,

v.

SUE HUBBARD (Warden), and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

APR 13 2007

GREGORY C. LANGHAM
CLERK

ORDER TO TRANSFER ACTION TO COURT OF APPEALS

Applicant Carl H. Wade is a prisoner who currently is incarcerated in Vacaville, California. Mr. Wade filed *pro se* an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (2006). He paid the \$5.00 filing fee.

The Court must construe the habeas corpus application liberally because Mr. Wade is representing himself. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). However, the Court should not be the *pro se* litigant's advocate. *See Hall*, 935 F.2d at 1110. For the reasons stated below, the habeas corpus application will be transferred to the United States Court of Appeals for the Tenth Circuit (Tenth Circuit).

Mr. Wade previously sought habeas corpus relief in this Court pursuant to 28 U.S.C. § 2254. *See Wade v. Schwartz*, No. 04-cv-01083-ZLW (D. Colo. Aug. 31, 2004), *appeal dismissed*, No. 04-1460 (10th Cir. Feb. 7, 2005). In No. 04-cv-01083-ZLW, Mr. Wade challenged the validity of the same state court conviction he is


challenging in the instant action. The habeas corpus application in 04-cv-01083-ZLW was denied as barred by the one-year limitation period in 28 U.S.C. § 2244(d) (2006). Therefore, the instant application is a second or successive application.

Pursuant to 28 U.S.C. § 2244(b)(3) (2006), Mr. Wade must apply to the Tenth Circuit for an order authorizing this Court to consider his second or successive application. Mr. Wade alleges that he has not obtained the necessary authorization from the Tenth Circuit. **See** application at 7, ¶ 3. Therefore, the Court must transfer this action to the Tenth Circuit pursuant to 28 U.S.C. § 1631 (1994). **See Coleman v. United States**, 106 F.3d 339, 341 (10th Cir. 1997) (per curiam). Accordingly, it is

ORDERED that the clerk of the Court transfer the instant action to the United States Court of Appeals for the Tenth Circuit pursuant to 28 U.S.C. § 1631.

DATED at Denver, Colorado, this 13 day of April, 2007.

BY THE COURT:


ZITA L. WEINSHIENK, Senior Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 07-cv-00639-BNB

Carl H. Wade
Reg. No. E-18321
PO Box 2500 I-127-L
Vacaville, CA 95696-2500

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 4/13/07.

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk