

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
07 - CV - 00773 - BNG

APR 16 2007

GREGORY C. LANGHAM
CLERK

Civil Action No. _____

(The above civil action number must appear on all future papers sent to the court in this action. Failure to include this number may result in a delay in the consideration of your claims.)

CLOVIS CARL GREEN, JR.,

Applicant,

v.

JAMES E. ABBOTT, and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

ORDER TO COMMENCE CIVIL ACTION AND
TO TRANSFER ACTION TO COURT OF APPEALS

Applicant Clovis Carl Green, Jr., is a prisoner in the custody of the Colorado Department of Corrections who is incarcerated at the Colorado Territorial Correctional Facility in Cañon City, Colorado. Mr. Green 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. As part of the Court's review pursuant to D.C.COLO.LCivR 8.2, the Court has determined that the submitted habeas corpus application is in proper form. Therefore, the clerk of the Court will be directed to commence a civil action. The clerk of the Court also will be directed to mail to Mr. Green, together with a copy of this order, a receipt for full payment of the \$5.00 filing fee.

The Court must construe the habeas corpus application liberally because Mr. Green 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. Green previously sought habeas corpus relief in this Court pursuant to 28 U.S.C. § 2254. **See Green v. Parmenter**, No. 96-cv-00534-EWN (D. Colo. Mar. 5, 1999), **appeal dismissed, Green v. Price**, No. 99-1116, 1999 WL 586995 (10th Cir. Aug. 5, 1999). In No. 96-cv-00534-EWN, Mr. Green challenged the validity of the same state court conviction, No. 92-CR-0884, he is challenging in the instant action. The habeas corpus application in No. 96-cv-00534-EWN was denied on the merits. Therefore, the instant application is a second or successive application.

Pursuant to 28 U.S.C. § 2244(b)(3) (2006), Mr. Green must apply to the Tenth Circuit for an order authorizing this Court to consider his second or successive application. Mr. Green 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

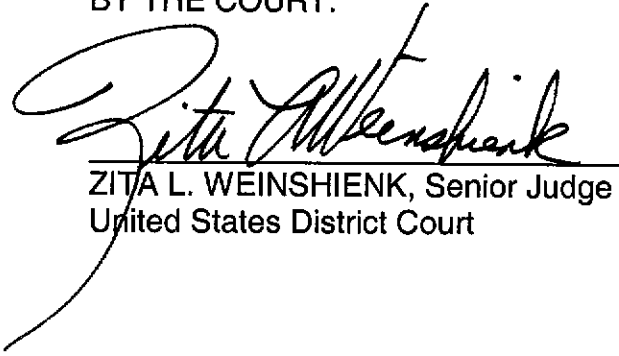
ORDERED that the clerk of the Court is directed to commence this civil action. It is

FURTHER ORDERED that the clerk of the Court mail to Applicant Clovis Carl Green, Jr., together with a copy of this order, a receipt for full payment of the \$5.00 filing fee. It is

FURTHER 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 12 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 - 00773** - BNB

Clovis Carl Green
Prisoner No. 69277
CTCF
PO Box 1010
Cañon City, CO 81215- 1010

I hereby certify that I have mailed a copy of the **ORDER** and a receipt for the full **\$5.00 filing fee** to the above-named individuals on 4/16/07

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk