

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 07-cv-00837-BNB

BRIAN RIESE,
Applicant,

v.

COLORADO (COURT OF APPEALS),
Respondent.FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

APR 27 2007

GREGORY C. LANGHAM
CLERK

ORDER DIRECTING APPLICANT TO FILE AMENDED PLEADING

Applicant, Brian Riese, is a prisoner in the custody of the Colorado Department of Corrections at the Bent County Correctional Facility at Las Animas, Colorado. Mr. Riese has filed *pro se* an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 claiming that his sentence is illegal. The court must construe the application liberally because Mr. Riese 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, Mr. Riese will be ordered to file an amended pleading.

The court has reviewed the application and finds that it is deficient. First, the application must be asserted pursuant to 28 U.S.C. § 2254 because Mr. Riese is challenging the validity, and not the execution, of his sentence. In addition, because Mr. Riese has not used the proper form for a habeas corpus application pursuant to § 2254, the court lacks the necessary information to determine whether the application is timely filed and whether Mr. Riese has exhausted state court remedies. Therefore, Mr.

Riese will be directed to file an amended pleading on the proper form and to provide all of the requested information regarding the postconviction motions he has filed.

Mr. Riese is reminded that he must allege specific facts in support of his claims to demonstrate that his federal constitutional rights have been violated. Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts requires that Mr. Riese go beyond notice pleading. *See Blackledge v. Allison*, 431 U.S. 63, 75 n.7 (1977). He must allege specific facts to support each asserted claim. Naked allegations of constitutional violations are not cognizable under 28 U.S.C. § 2254. *See Ruark v. Gunter*, 958 F.2d 318, 319 (10th Cir. 1992) (per curiam). Accordingly, it is

ORDERED that Mr. Riese file **within thirty (30) days from the date of this order** an amended pleading that complies with this order. It is

FURTHER ORDERED that the clerk of the court mail to Mr. Riese, together with a copy of this order, two copies of the following form: Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254. It is

FURTHER ORDERED that if Mr. Riese fails within the time allowed to file an amended pleading as directed, the application will be denied and the action will be dismissed without further notice.

DATED April 27, 2007, at Denver, Colorado.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 07-cv-00837-BNB

Brian Riese
Prisoner No. 82558
Bent County Correctional Facility
11560 Road FF.75
Las Animas, CO 81054-9573

I hereby certify that I have mailed a copy of the **ORDER and two copies of Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254** to the above-named individuals on 4/27/07

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk