

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 07-cv-01636-ZLW

RONALD JENNINGS FOGLE,

Applicant,

v.

WARDEN DICK SMELSER, and
JOHN SUTHERS, Attorney General of the State of Colorado,

Respondents.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

OCT 04 2007

GREGORY C. LANGHAM
CLERK

ORDER VACATING ORDER AND JUDGMENT OF DISMISSAL

Applicant Ronald Jennings Fogle is a prisoner in the custody of the Colorado Department of Corrections at the Crowley County Correctional Facility at Olney Springs, Colorado. Mr. Fogle has filed *pro se* on September 21, 2007, "Applicant's Petition for an [sic] Reconsideration of the Order and Judgment of Dismissal Dated September 12, 2007, From Honorable Senior Judge Zita L. Weinshienk." The Court must construe the motion to reconsider because Mr. Fogle 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). For the reasons stated below, the motion will be granted.

Mr. Fogle initiated this action by filing a motion seeking leave to proceed *in forma pauperis* and an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. In an order filed on August 2, 2007, the Court entered an order directing the clerk of the Court to commence a civil action and denying the *in forma pauperis* motion. The Court ordered Mr. Fogle to pay the \$5.00 filing fee within thirty days if he

wished to pursue his claims. On September 12, 2007, the Court dismissed the instant action for failure to pay the filing fee.


Mr. Fogle asserts in the September 21 motion to reconsider that the filing fee for this action was paid on August 7, 2007, and he attaches to the motion proof of payment of the filing fee. For some unexplained reason, Mr. Fogle's payment of the filing fee was not entered on the Court's docket at the time the payment was made. The Court's docket now has been corrected and the Order and Judgment of Dismissal entered in this action will be vacated. Accordingly, it is

ORDERED that "Applicant's Petition for an [sic] Reconsideration of the Order and Judgment of Dismissal Dated September 12, 2007, From Honorable Senior Judge Zita L. Weinshienk" filed on September 21, 2007, is granted. It is

FURTHER ORDERED that the Court's Order and Judgment of Dismissal and the Judgment entered on September 12, 2007, are vacated.

DATED at Denver, Colorado, this 3 day of Oct., 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-01636-BNB

Ronald Jennings Fogle
Prisoner No. 106339
Crowley County Corr. Facility
6564 State Hwy. 96
Olney Springs, CO 81062-8700

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 10/4/07

GREGORY C. LANGHAM, CLERK

By: _____


Deputy Clerk