

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 08-cv-02784-BNB

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

THURMAN HARRISON, JR.,

JAN 21 2009

Applicant,

GREGORY C. LANGHAM
CLERK

v.

WARDEN OF THE FREMONT CORRECTIONAL FACILITY, and
EXECUTIVE DIRECTOR OF THE COLORADO DEPARTMENT OF CORRECT [sic],

Respondents.

ORDER DIRECTING APPLICANT TO FILE SECOND AMENDED APPLICATION

Applicant, Thurman Harrison, Jr., is a prisoner in the custody of the Colorado Department of Corrections who currently is incarcerated at the Fremont Correctional Facility at Cañon City, Colorado. Mr. Harrison initiated this action by filing *pro se* an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. On December 23, 2008, he filed an amended habeas corpus application pursuant to § 2241 and a document titled "Motion in Response to District Court Magistrate Judge Order." He has been granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915.

The Court must construe the amended application liberally because Mr. Harrison is not represented by an attorney. *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 an advocate for a *pro se* litigant. *See Hall*, 935 F.2d at 1110. For the reasons stated below, Mr. Harrison will be ordered to file a second amended application.

The Court has reviewed the amended application filed by Mr. Harrison and finds that it is deficient. The second of the two claims Mr. Harrison raises in the amended application calls into question the validity, not the execution, of Mr. Harrison's sentence. **See *Montez v. McKinna***, 208 F.3d 862, 865 (10th Cir. 2000). More specifically, Mr. Harrison in his second claim is challenging the fact that he allegedly was not advised that his sentence would include a period of mandatory parole.

The United States Court of Appeals for the Tenth Circuit cautioned Mr. Harrison in ***In Re Harrison***, No. 08-1359 (10th Cir. Oct. 29, 2008), that "he may not base his proposed [28 U.S.C.] § 2241 claims on any theory or argument that his present sentence, as imposed, is unlawful." **See** "Motion in Response to District Court Magistrate Judge Order," attachment at 3. Mr. Harrison's second claim challenges his present sentence, as imposed, as unlawful. Therefore, the second claim may not be asserted in this § 2241 action. If Mr. Harrison wishes to pursue his second claim, he may do so in a separate action initiated pursuant to 28 U.S.C. § 2254.

Mr. Harrison will be directed to file a second amended application pursuant to 28 U.S.C. § 2241 if he wishes to pursue, in this action, his first claim and any other claims challenging the execution of his sentence. Mr. Harrison is reminded that he must allege specific facts in support of his claims to demonstrate that his federal constitutional rights have been violated. Naked allegations of constitutional violations are not sufficient to state a habeas corpus claim. **See *Ruark v. Gunter***, 958 F.2d 318, 319 (10th Cir. 1992) (per curiam). Accordingly, it is

ORDERED that Mr. Harrison file a second amended application pursuant to 28 U.S.C. § 2241 **within thirty (30) days from the date of this order.** It is

FURTHER ORDERED that the clerk of the Court mail to Mr. Harrison, together with a copy of this order, two copies of the following form to be used in filing the second amended application: Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241. It is

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

DATED January 21, 2009, 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. 08-cv-02784-BNB

Thurman Harrison, Jr.
Prisoner No. 47608
Fremont Correctional Facility
PO Box 999 - Unit 2-F-5
Cañon City, CO 81215-0999

I hereby certify that I have mailed a copy of the **ORDER and two copies of the Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241** form to the above-named individuals on 1/21/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk