

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-00068-BNB

RAYFEAL R. NUNN,

Applicant,

v.

HOYT BRILL (Warden of CCA), and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

JAN 29 2009

GREGORY C. LANGHAM
CLERK

ORDER DIRECTING APPLICANT TO FILE AMENDED APPLICATION

Applicant, Rayfeal R. Nunn, is a prisoner in the custody of the Colorado Department of Corrections who currently is confined at the Kit Carson Correctional Center in Burlington, Colorado. Mr. Nunn filed *pro se* an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has been granted leave to proceed pursuant to 28 U.S.C. § 1915.

The Court will construe the habeas corpus application liberally because Mr. Nunn 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. Nunn will be ordered to file an amended application.

Mr. Nunn alleges that he was convicted on criminal charges of forgery, theft, and criminal impersonations, as well as adjudicated as an habitual criminal. He asserts six claims, which fail to comply with Rule 8 of the Federal Rules of Civil Procedure. The

Federal Rules of Civil Procedure apply to applications for habeas corpus relief. **See** Fed. R. Civ. P. 81(a)(2); **Browder v. Director, Dep't of Corrections**, 434 U.S. 257, 269 (1978); **Ewing v. Rodgers**, 826 F.2d 967, 969-70 (10th Cir. 1987). Pursuant to Fed. R. Civ. P. 8(a), a pleading shall "contain (1) a short and plain statement of the grounds for the court's jurisdiction, . . . (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for the relief sought" The philosophy of Rule 8(a) is reinforced by Rule 8(d)(1) which provides that "[e]ach allegation must be simple, concise, and direct." Taken together, Rules 8(a) and (d)(1) underscore the emphasis placed on clarity and brevity by the federal pleading rules. Prolix, vague, or unintelligible pleadings violate the requirements of Rule 8.

Mr. Nunn's six asserted claims fail to comply with Fed. R. Civ. P. 8(a)(2) because they rely on verbose attachments to supplement or explain the claims. In addition, some of the attachments fail to comply with D.C.COLO.LCivR 10.1. because they are typed in all capital letters, which are difficult to read, instead of in capital and lower case letters. In the amended application he will be directed to file, Mr. Nunn must state, clearly and concisely, each claim he intends to assert in this action. Mr. Nunn also must assert in the amended application specifically how his federal rights were violated in his state criminal case. Accordingly, it is

ORDERED that Mr. Nunn file **within thirty (30) days from the date of this order** an amended application that complies with Fed. R. Civ. P. 8 and with D.C.COLO.LCivR 10.1. for the reasons discussed in this order. It is

FURTHER ORDERED that Mr. Nunn's amended application shall be titled, "Amended Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254," and shall be filed with the Clerk of the Court for the United States District Court for the District of Colorado at the Alfred A. Arraj U.S. Courthouse, 901 Nineteenth Street, Room A-105, Denver, Colorado 80294-3589. It is

FURTHER ORDERED that the clerk of the Court mail to Mr. Nunn, together with a copy of this order, two copies of the following form to be used in filing the amended application: Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254. It is

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

DATED January 22, 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. 09-cv-00068-BNB

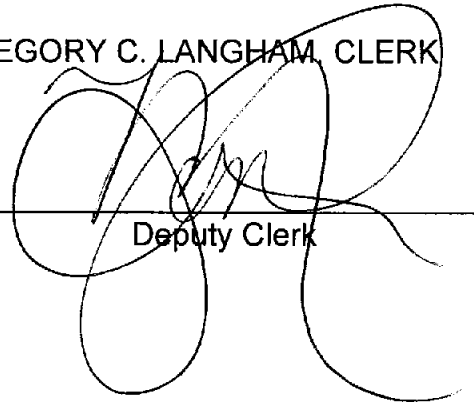
Rayfeal R. Nunn
Prisoner No. 92789
Kit Carson Corr. Center
PO Box 2000
Burlington, CO 80807

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. § 2254** form to the above-named individuals on 1/22/09

GREGORY C. LANGHAM, CLERK

By: _____

Deputy Clerk

A large, stylized handwritten signature in black ink, appearing to be 'G. Langham', is written over a horizontal line. The signature is highly cursive and loops around the line.