

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-00138-BNB

ANGELO BENZOR,

Applicant,

v.

WARDEN MR. MILYARD, and  
THE ATTORNEY GENERAL OF THE STATE OF [COLORADO],

Respondents.

**FILED**  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

JAN 29 2009

GREGORY C. LANGHAM  
CLERK

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ORDER DIRECTING APPLICANT TO FILE AMENDED APPLICATION

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Applicant, Angelo Benzor, is a prisoner in the custody of the Colorado Department of Corrections (DOC) who currently is confined at the Sterling, Colorado, correctional facility. Mr. Benzor filed *pro se* an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (2006). He has been granted leave to proceed pursuant to 28 U.S.C. § 1915 (2006).

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

Mr. Benzor alleges that he was convicted in Weld County District Court on charges of escape and three habitual criminal counts, and that he was sentenced to

forty-eight years of imprisonment in the DOC. He also alleges that his conviction and sentence were upheld on appeal.

Mr. Benzor's application fails 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. Benzor's application fails to comply with Fed. R. Civ. P. 8(a)(2) because he fails to assert any claims or the relief he wants. Mr. Benzor will be directed to file on the proper, Court-approved form an amended application that complies with Fed. R. Civ. P. 8. The amended application Mr. Benzor will be directed to file must assert clearly his federal claims and the relief he seeks. Accordingly, it is

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

FURTHER ORDERED that Mr. Benzor'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. Benzor, 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. Benzor 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 29, 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-00138-BNB

Angelo Benzor  
Reg No. 115458  
Sterling Correctional Facility  
PO Box 6000  
Sterling, CO 80751-6000

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 1/29/09

GREGORY C. LANGHAM, CLERK

By:  Deputy Clerk