

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

APR 01 2009

GREGORY C. LANGHAM
CLERK

Civil Action No. 09-cv-00351-BNB

LAWRENCE M. JIRON,

Applicant,

v.

JUDGE PATTY SWIFT, Alamosa County, and
JOHN W. SUTHERS, Attorney General of the State of Colorado,

Respondents.

ORDER OF DISMISSAL

Applicant Lawrence M. Jiron initiated this action by filing *pro se* an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 challenging the validity of his criminal conviction and sentence in Alamosa County District Court case number 01-CR-85. On February 25, 2009, Magistrate Judge Boyd N. Boland ordered Mr. Jiron to show cause why this action should not be dismissed as repetitive of another habeas corpus action Mr. Jiron has filed that currently is pending before this Court. *See Jiron v. Sloan*, No. 09-cv-00102-BNB (D. Colo. filed Jan. 21, 2009). On March 19, 2009, Mr. Jiron filed his response to the show cause order and a Motion for Immediate Release.

The Court must construe the papers filed by Mr. Jiron liberally because he 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 id.* For the reasons stated below, the application will be denied and the action will be dismissed.

Mr. Jiron is challenging the same state court criminal conviction and sentence in this action that he is challenging in 09-cv-00102-BNB. Mr. Jiron alleges in his response to Magistrate Judge Boland's show cause order that the instant action was filed in support of 09-cv-00102-BNB. However, Mr. Jiron does not cite any authority that would allow him to file an entirely new action in support of a pending case.

Repetitious litigation of virtually identical causes of action may be dismissed as frivolous or malicious. **See *Bailey v. Johnson***, 846 F.2d 1019, 1021 (5th Cir. 1988) (per curiam); ***Van Meter v. Morgan***, 518 F.2d 366, 368 (8th Cir. 1975) (per curiam). Furthermore, the Court may consult its own records to determine whether a pleading repeats pending or previously litigated claims. **See *Duhart v. Carlson***, 469 F.2d 471 (10th Cir. 1972). The Court has done so and finds that the claims Mr. Jiron raises in the instant action are repetitive of the claims he is litigating in 09-cv-00102-BNB. Therefore, the instant action will be dismissed. Accordingly, it is

ORDERED that the habeas corpus application is denied and the action is dismissed as repetitive of 09-cv-00102-BNB. It is

FURTHER ORDERED that the Motion for Immediate Release filed on March 19, 2009, is denied as moot.

DATED at Denver, Colorado, this 1 day of April, 2009.

BY THE COURT:



ZITA L. WEINSHIENK, Senior Judge
United States District Court

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CERTIFICATE OF MAILING

Civil Action No. 09-cv-00351-BNB

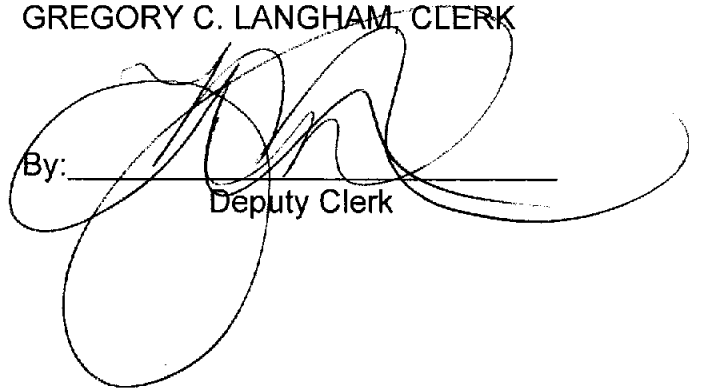
Lawrence M. Jiron
Prisoner No. 116040
Bent County Correctional Facility
11560 Road FF.75
Las Animas, CO 81054-9573

I hereby certify that I have mailed a copy of the **ORDER AND JUDGMENT** to the
above-named individuals on 4/1/09

GREGORY C. LANGHAM, CLERK

By: _____

Deputy Clerk

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is highly cursive and loops around the line.