

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-00812-BNB

BILLY VON HALLEY,

Applicant,

v.

KEVIN MILYARD, and  
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

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

JUN 08 2009

GREGORY C. LANGHAM  
CLERK

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ORDER DIRECTING APPLICANT TO FILE SECOND AMENDED APPLICATION

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Applicant is a prisoner in the custody of the Colorado Department of Corrections at the Sterling Correctional Facility in Sterling, Colorado. Applicant initiated this action by filing *pro se* an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254. Although Applicant indicated in the original application that he is challenging the validity of his conviction and sentence in Adams County District Court case number 00CR584, he did not assert any claims for relief. Therefore, on May 5, 2009, the court ordered Applicant to file an amended application that clarifies the claims he intends to raise in this action. Applicant was directed to specify each claim that he is asserting and to provide specific factual support for each asserted claim. On June 3, 2009, Applicant filed an amended Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254.

The court must construe the amended application liberally because Applicant 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 (10<sup>th</sup> 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, Applicant will be ordered to file a second amended application.

Applicant has made an effort to identify the claims he intends to raise in this action because he has included a list of claims in the amended application as his request for relief. However, it is not clear that all of the various claims Applicant asserts in the attached list of claims actually relates to his conviction and sentence. For example, Applicant asserts a claim that his guilty plea was not voluntary but he alleges in the amended application that he was convicted following a jury trial. Furthermore, the amended application also is deficient because Applicant still fails to provide specific factual support for the claims he is raising. For example, Applicant fails to provide any facts in support of his claim that his guilty plea was not voluntary. The same problem exists for each of the claims Applicant raises in his list of claims. As Applicant already has been advised, Rule 2(c)(2) of the Rules Governing Section 2254 Cases in the United States District Courts requires that he “state the facts supporting each ground.”

Applicant will be given one more opportunity to file a pleading in this action that cures these deficiencies. Applicant again is advised that he must specify each claim that he is asserting and he must provide specific factual support for each asserted claim. Applicant also is reminded that the habeas corpus rules are more demanding than the rules applicable to ordinary civil actions, which require only notice pleading. **See Mayle v. Felix**, 545 U.S. 644, 655 (2005). Naked allegations of constitutional violations are not cognizable under § 2254. **See Ruark v. Gunter**, 958 F.2d 318, 319

(10<sup>th</sup> Cir. 1992) (per curiam). Accordingly, it is

ORDERED that Applicant file **within thirty (30) days from the date of this order** a second amended habeas corpus application that complies with this order. It is

FURTHER ORDERED that the clerk of the court mail to Applicant, together with a copy of this order, two copies of the following form: Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254. It is

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

DATED June 8, 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-00812-BNB

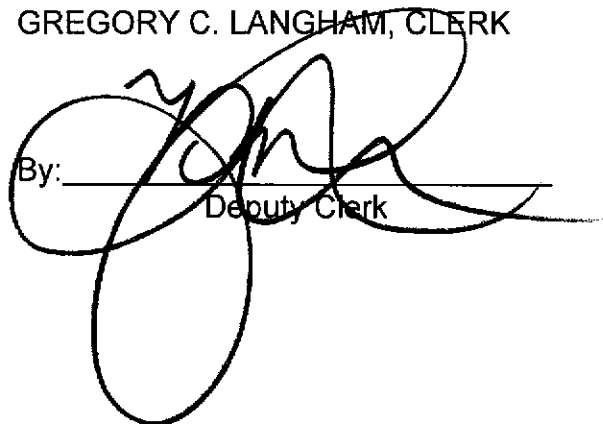
Billy Von Halley  
Prisoner No. 110924  
Sterling Correctional Facility  
PO Box 6000  
Sterling, CO 80751

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 6/8/09

GREGORY C. LANGHAM, CLERK

By: \_\_\_\_\_

Deputy Clerk

A large, stylized handwritten signature in black ink, written over the signature line and extending to the right.