

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-00872-BNB

STEPHEN V. HUNT, JR.,

Applicant,

v.

BLAKE R. DAVIS,

Respondent.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

JUN 22 2009

GREGORY C. LANGHAM
CLERK

ORDER OF DISMISSAL

Applicant, Stephen V. Hunt, Jr., is a prisoner in the custody of the United States Bureau of Prisons who currently is incarcerated at the United States Penitentiary in Florence, Colorado. He filed *pro se* an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241. He was granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915.

On May 15, 2009, Magistrate Judge Boyd N. Boland ordered Mr. Hunt to file an amended pleading within thirty days because the Court found that Mr. Hunt appeared to assert civil rights claims attacking the conditions of confinement, not habeas corpus claims. On May 27, 2009, Mr. Hunt filed a motion asking the Court to reconsider the order for an amended pleading. On June 1, 2009, Magistrate Judge Boland granted Mr. Hunt's motion for reconsideration, vacated the May 15 order, and directed Mr. Hunt to file within thirty days an amended application that only asserted habeas corpus claims.

On June 8, 2009, Mr. Hunt filed an amended application. As relief he asks to be discharged from custody and to have expunged his conviction in **United States v. Hunt**, No. 06-cr-00155-EWN-1 (D. Colo. Dec. 13, 2007), **aff'd**, No. 07-1518 (10th Cir. Jan. 27, 2009), relief not appropriately requested in a 28 U.S.C. § 2241 action. **See Bradshaw v. Story**, 86 F.3d 164, 166 (10th Cir. 1996). He also asks for injunctive relief, i.e., to have a facility built where he and other administrative detention prisoners may be housed. Such relief also is not appropriate in a § 2241 action. **See id.**

The Court must construe liberally the amended application because Mr. Hunt is a **pro se** litigant. **See Haines v. Kerner**, 404 U.S. 519, 520-21 (1972); **Hall v. Bellmon**, 935 F.2d 1106, 1110 (10th Cir. 1991). However, a Court should not act as a **pro se** litigant's advocate. **See Hall**, 935 F.2d at 1110. For the reasons stated below, the amended application will be denied.

The Court has reviewed the amended application filed in this action and finds that the claims Mr. Hunt asserts are not habeas corpus claims. "The essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody." **See Preiser v. Rodriguez**, 411 U.S. 475, 484 (1973). Mr. Hunt is not challenging the validity of his conviction or the execution of his sentence. Instead, he challenges the conditions of his confinement. He complains that he was removed from the general prison population (claim one); subjected to cruel and unusual punishment because he has been denied shower and toilet facilities, legal access, water, sanitary living conditions, food, and religious services (claim two); and put in danger when he was

placed in administrative detention. Generally, a prisoner's challenge to his conditions of confinement is cognizable in a civil rights action. **See, e.g., *Richards v. Bellmon***, 941 F.2d 1015, 1018 (10th Cir. 1991).


Mr. Hunt has failed to comply with the June 1, 2009, order directing him to file an amended application that only asserts habeas corpus claims. Therefore, the amended application and the action will be dismissed without prejudice for failure to comply with the June 1 order by filing an amended application that only asserts claims properly asserted in a habeas corpus action. Accordingly, it is

ORDERED that the amended application is denied and the action dismissed without prejudice for the failure of Applicant, Stephen V. Hunt, Jr., to comply with the directives of the June 1, 2009, order for an amended application that only asserts claims properly asserted in a habeas corpus action. It is

FURTHER ORDERED that the request Mr. Hunt filed on June 8, 2009, is denied as moot.

DATED at Denver, Colorado, this 22 day of June, 2009.

BY THE COURT:


ZITA L. WEINSHIENK, Senior Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 09-cv-00872-BNB

Stephen V. Hunt, Jr.,
Reg No. 34155-013
USP - Florence
P.O. Box 7000
Florence, CO 81226

I hereby certify that I have mailed a copy of the **ORDER AND JUDGMENT** to the above-named individuals on 6/22/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk