

FILED  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

JUL 15 2009

GREGORY C. LANGHAM  
CLERK

Civil Action No. 09CV01673 BnB  
(The above civil action number must appear on all future papers sent to the court in this action. Failure to include this number may result in a delay in the consideration of your claims.)

SIRRLOVE WILLIAMS,

Applicant, named as Movant,

v.

ATTORNEY MICHAEL ANDRE, and  
THE PEOPLE OF THE STATE OF COLORADO,

Respondents.

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**ORDER DIRECTING CLERK TO COMMENCE CIVIL ACTION AND  
DIRECTING APPLICANT TO CURE DEFICIENCY**

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Applicant has submitted an Affidavit and a Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255. However, Applicant was not convicted in this Court on criminal charges, and Criminal Action No. 04-cr-02276, the conviction he is challenging, appears to be a state criminal conviction in Denver District Court. As part of the court's review pursuant to D.C.COLO.LCivR 8.2, the court has determined that the submitted document is deficient as described in this order. Notwithstanding the deficiencies, the clerk of the court will be directed to commence a civil action. Applicant will be directed to cure the following if he wishes to pursue his claims. Any papers that the Applicant files in response to this order must include the civil action number on this order.

**28 U.S.C. § 1915 Motion and Affidavit:**

- (1)  is not submitted
- (2)  is missing affidavit
- (3)  is missing certified copy of prisoner's trust fund statement for the 6-month period immediately preceding this filing
- (4)  is missing certificate showing current balance in prison account
- (5)  is missing required financial information
- (6)  is missing an original signature by the prisoner
- (7)  is not on proper form (must use the court's current form)
- (8)  names in caption do not match names in caption of complaint, petition or habeas application
- (9)  An original and a copy have not been received by the court. Only an original has been received.
- (10)  other: Motion is necessary only if filing fee is not paid in advance.

**Complaint, Petition or Application:**

- (11)  is not submitted
- (12)  is not on proper form (must use the court's current form)
- (13)  is missing an original signature by the prisoner
- (14)  is missing page nos. \_\_\_\_
- (15)  uses et al. instead of listing all parties in caption
- (16)  An original and a copy have not been received by the court. Only an original has been received.
- (17)  Sufficient copies to serve each defendant/respondent have not been received by the court.
- (18)  names in caption do not match names in text
- (19)  other: In order to challenge a state criminal conviction, Applicant must file an Application for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254

The Court also notes that Applicant names the late Michael Andre, apparently his criminal defense attorney, and "The People of the State of Colorado" as Respondents. The law is well-established that the only proper respondent to a habeas corpus action is the habeas applicant's custodian. **See** 28 U.S.C. § 2242; Rules 2(a) and 1(b), Rules Governing Section 2254 Cases in the United States District Courts; and **Harris v. Champion**, 51 F.3d 901, 906 (10th Cir. 1995). Accordingly, it is

ORDERED that the clerk of the court commence a civil action in this matter. It is FURTHER ORDERED that the Applicant cure the deficiencies designated above

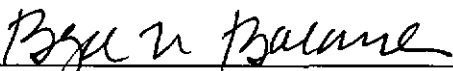
**within thirty (30) days from the date of this order.** Any papers that the Applicant files in response to this order must include the civil action number on this order. It is

FURTHER ORDERED that the clerk of the court mail to the Applicant, together with a copy of this order, two copies of the following forms: Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action and Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254. It is

FURTHER ORDERED that, if the Applicant fails to cure the designated deficiencies **within thirty (30) days from the date of this order**, the motion to vacate and the action will be dismissed without further notice. The dismissal shall be without prejudice.

DATED at Denver, Colorado, this 13<sup>th</sup> day of July, 2009.

BY THE COURT:

  
\_\_\_\_\_  
BOYD N. BOLAND  
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No.

09CV01673

Sirrlove R. Williams  
Prisoner No. 1613915  
Denver County Jail  
PO Box 1108  
Denver, CO 80201

I hereby certify that I have mailed a copy of the **ORDER** and **two copies of the Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action and Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 forms** to the above-named individuals on 7-15-09

GREGORY C. LANGHAM, CLERK

By:



Deputy Clerk