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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01673-BNB

SIRRLOVE R. WILLIAMS,

Applicant,

v.

ATTORNEY MICHAEL ANDRE,  
PEOPLE OF THE STATE OF COLORADO,  
COLORADO DEPARTMENT OF CORRECTIONS, and  
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

FILED  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

SEP 03 2009

GREGORY C. LANGHAM  
CLERK

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ORDER OF DISMISSAL

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Applicant, Sirrlove R. Williams, currently is incarcerated at the Denver County Jail. He attempted to initiate this action by submitting to the Court *pro se* an affidavit and a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255.

In an order filed on July 15, 2009, Magistrate Boyd N. Boland informed Mr. Williams that, because he was not convicted in this Court on criminal charges, and because Criminal Action No. 04-cr-02276, the conviction he is challenging, appears to be a state criminal conviction in Denver District Court, he must cure certain enumerated deficiencies in this case within thirty days.

Specifically, Mr. Williams was directed either to submit the \$5.00 filing fee for a habeas corpus action or to submit on the proper, Court-approved form a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action. He also was directed to submit on the proper, Court-approved form an

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Application for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254. In the July 15, 2009, order, Magistrate Judge Boland noted that Mr. Williams named as Respondents the late Michael Andre, apparently his criminal defense attorney, and "The People of the State of Colorado," and informed him that 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).

On July 28, 2009, in response to the July 15, 2009, order to cure, Mr. Williams submitted an Application for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 naming as Respondents Attorney Michael Andre, People of the State of Colorado, and the Colorado Department of Corrections. He also submitted a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action. However, the inmate statement Mr. Williams submitted is missing a certificate of the warden or other appropriate prison officer as to the amount of money on deposit in his inmate trust fund account.

Rule 3 of the Rules Governing Section 2254 Cases in the United States District Courts requires a "certificate of the warden or other appropriate officer of the institution in which the petitioner is confined as to the amount of money or securities on deposit to the petitioner's credit in any account in the institution." The Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action also notes this requirement. The July 15, 2009, order warned Mr. Williams that if he failed to cure the designated deficiencies within the time allowed, the motion to vacate


and the action would be dismissed without further notice. Mr. Williams has failed within the time allowed to cure all the deficiencies designated in the July 15 order. Accordingly, it is

ORDERED that the habeas corpus application and the motion to vacate are denied, and the action dismissed without prejudice for failure to cure. It is

FURTHER ORDERED leave to proceed pursuant to 28 U.S.C. § 1915 is denied as moot.

DATED at Denver, Colorado, this 2 day of Sept., 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-01673-BNB

Sirrlove R. Williams  
Prisoner No. 83577  
DRDC  
PO Box 392004  
Denver, CO 80239

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

I hereby certify that I have mailed a copy of the **ORDER AND JUDGMENT** to the  
above-named individuals on 9/3/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk