

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01712-BNB

JOHN GERALD TRUJILLO,

Applicant,

v.

PAM PLOUGH, Warden, CTCF, and  
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

FILED  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

JUL 24 2009

GREGORY C. LANGHAM  
CLERK

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ORDER DIRECTING APPLICANT TO FILE AMENDED APPLICATION

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Applicant John Gerald Trujillo is a prisoner in the custody of the Colorado Department of Corrections, who currently is incarcerated at Colorado Territorial Correctional Facility in Cañon City, Colorado. Mr. Trujillo has filed a *pro se* Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254. The Court must construe the Application liberally because Mr. Trujillo is a *pro se* litigant. *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). The Court, however, should not act as a *pro se* litigant's advocate. *See Hall*, 935 F.2d at 1110. For the reasons stated below, Mr. Trujillo will be ordered to file an Amended Application.

Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts requires that Mr. Trujillo go beyond notice pleading. *See Blackledge v. Allison*, 431 U.S. 63, 75 n.7 (1977). Naked allegations of constitutional violations devoid of factual support are not cognizable in a federal habeas action. *See Ruark v. Gunter*, 958 F.2d 318, 319 (10<sup>th</sup> Cir. 1992) (per curiam). Mr. Trujillo must allege on the Court-

approved form both the claims he seeks to raise and the specific facts to support each asserted claim. The Court has reviewed the Application submitted to the Court on July 20, 2009, and finds that it is deficient. Mr. Trujillo fails to assert on Pages Five and Six a statement of the claims he intends to raise in this Court.

The Court is not responsible for reviewing any attached documents submitted by Mr. Trujillo to determine what claims and specific facts he intends to raise in the instant action. Therefore, Mr. Trujillo will be ordered to file an Amended Application in which he identifies, on the Court-approved form, all the specific claims for relief that he is asserting, and in which he provides specific facts in support of each asserted claim.

Mr. Trujillo further is advised that even if the Court were to consider the pages attached to the Application, the Federal Rules of Civil Procedure apply to applications for habeas corpus relief. *See* Fed. R. Civ. P. 81(a)(4); *Browder v. Director, Dep't of Corrections*, 434 U.S. 257, 269 (1978); *Ewing v. Rodgers*, 826 F.2d 967, 969-70 (10<sup>th</sup> Cir. 1987). Pursuant to Fed. R. Civ. P. 8(a), a pleading must “contain (1) a short and plain statement of the grounds for the court’s jurisdiction, . . . (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and (3) a demand for the relief sought . . . .” The philosophy of Rule 8(a) is reinforced by Rule 8(d)(1) which provides that “[e]ach allegation must be simple, concise, and direct.” Taken together, Rules 8(a) and (d)(1) underscore the emphasis placed on clarity and brevity by the federal pleading rules.

Mr. Trujillo’s claims fail to comply with Fed. R. Civ. P. 8(a) and (d)(1) because they are not short and plain statements. Accordingly, it is

ORDERED that Mr. Trujillo file **within thirty days from the date of this Order** an Amended Application that complies with the Order. It is

FURTHER ORDERED that the Clerk of the Court mail to Mr. Trujillo, 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 Mr. Trujillo fails within the time allowed to file an Amended Application, as directed above, the action will be dismissed without further notice.

DATED at Denver, Colorado, this 23<sup>rd</sup> day of July, 2009.

BY THE COURT:

*s/Craig B. Shaffer* \_\_\_\_\_  
Craig B. Shaffer  
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

**CERTIFICATE OF MAILING**

Civil Action No. 09-cv-01712-BNB

John Gerald Trujillo  
Prisoner No. 109939  
CTCF  
PO Box 1010  
Cañon City, CO 81215- 1010

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 7/24/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk