

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01911-BNB

NAM NGUYEN,

Applicant,

v.

PAM PLOUGHE, Acting C.T.C.F. Warden, and  
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

FILED  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

AUG 25 2009

GREGORY C. LANGHAM  
CLERK

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ORDER DIRECTING APPLICANT TO FILE AMENDED APPLICATION

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Applicant, Nam Nguyen, is a prisoner in the custody of the Colorado Department of Corrections at the Colorado Territorial Correctional Facility in Cañon City, Colorado. Mr. Nguyen has filed *pro se* an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 challenging the validity of his conviction in Denver District Court case number 96CR2218.

The court must construe the application liberally because Mr. Nguyen 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, Mr. Nguyen will be ordered to file an amended application if he wishes to pursue his claims in this action.

The court has reviewed the application and finds that it is deficient because Mr. Nguyen fails to provide a clear statement of the claims he is raising in this action. For

example, it appears that Mr. Nguyen's first claim for relief actually includes a number of distinct claims because he alleges within the first claim that his guilty plea was involuntary, that the state failed to comply with the terms of his plea agreement, that he was not provided with an adequate interpreter, and that counsel was ineffective in a variety of ways. As a result, the precise claims Mr. Nguyen is raising are not clear. Mr.

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Nguyen also fails to provide specific factual allegations in support of each asserted claim. For example, with respect to the various allegations in his first claim, Mr. Nguyen fails to explain specifically why his guilty plea was not voluntary, how the state failed to comply with the terms of his plea agreement, why the interpreter was not adequate, how counsel was ineffective, and how Mr. Nguyen was prejudiced by counsel's alleged ineffectiveness. Mr. Nguyen's other claims in the application similarly lack specific factual support.

If Mr. Nguyen wishes to pursue his claims in this action, he must file an amended application in which he clarifies exactly what claims he is raising and in which he provides specific factual allegations in support of each asserted claim. Mr. Nguyen is advised that § 2254 provides a remedy only for violations of the "Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). Pursuant to Rules 2(c)(1) and 2(c)(2) of the Rules Governing Section 2254 Cases in the United States District Courts, Mr. Nguyen must "specify all [available] grounds for relief" and he must "state the facts supporting each ground." Furthermore, these 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 Mr. Nguyen file **within thirty (30) days from the date of this order** an amended habeas corpus application that complies with this order. It is

FURTHER ORDERED that the clerk of the court mail to Mr. Nguyen, 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. Nguyen fails within the time allowed to file an amended application as directed, the action will be dismissed without further notice.

DATED August 25, 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-01911-BNB

Nam Nguyen

Prisoner No. 92072

Colorado Territorial Corr. Facility

P.O. 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** to the above-named individuals on 8/25/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk