

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01969-BNB

MICHAEL R. O'CONNOR,

Applicant,

v.

WARDEN LIMON CORRECTIONAL FACILITY, and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

DEC 03 2009

GREGORY C. LANGHAM
CLERK

ORDER DIRECTING APPLICANT TO FILE AMENDED APPLICATION

Applicant, Michael R. O'Connor, is a prisoner in the custody of the Colorado Department of Corrections who currently is incarcerated at the Limon, Colorado, correctional facility. On August 28, 2009, he filed an Application for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254. He has paid the \$5.00 filing fee for this habeas corpus action.

The Court must construe the habeas corpus application liberally because Mr. O'Connor 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). 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. O'Connor will be ordered to file an amended application.

As part of the preliminary consideration of the Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 filed in this action and pursuant to *Denson v. Abbott*, 554 F. Supp. 2d 1206 (D. Colo. 2008), the Court determined that a limited pre-

answer response was appropriate. On September 2, 2009, Respondents were directed pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts to file a pre-answer response limited to addressing the affirmative defenses of timeliness under 28 U.S.C. § 2244(d) and/or exhaustion of state court remedies under 28 U.S.C. § 2254(b)(1)(A).

On October 21, 2009, Respondents filed their pre-answer response. In the pre-answer response they note that Mr. O'Connor fails to make clear each claim he intends to raise in this action. Specifically, they note that Applicant fails to make clear whether he is asserting a claim of ineffective assistance of counsel and that he fails to provide factual support for an ineffective-assistance-of-counsel claim, if he indeed he intends to raise such a claim.

Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts requires that Mr. O'Connor 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 (10th Cir. 1992) (per curiam). Mr. O'Connor must allege on the Court-approved form each claim he seeks to raise and the specific facts to support each asserted claim. The Court is not responsible for reviewing any separate documents submitted by Mr. O'Connor to determine what claims and specific facts he intends to raise in the instant action. Therefore, Mr. O'Connor will be ordered to file an amended application in which he identifies, on the Court-approved form, each specific claim for relief he is asserting and specific facts in support of each asserted claim.

Applicant also must assert on the form if and how he has exhausted any required remedies with respect to each of the asserted claims. Accordingly, it is

ORDERED that Applicant, Michael R. O'Connor, 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. O'Connor, 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. O'Connor fails within the time allowed to file an amended application, as directed above, the action will be dismissed without further notice.

DATED December 3, 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-01969-BNB

Michael R. O'Connor
Reg No. 99450
Limon Correctional Facility
49030 State Hwy. 71
Limon, CO 80826

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 12/3/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk