

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-02189-BNB

JERRY MASKE,

Applicant,

v.

VALERIE ESTRADA, and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

SEP 24 2009

GREGORY C. LANGHAM
CLERK

ORDER OF DISMISSAL

Applicant Jerry Maske currently resides in Aurora, Colorado. Mr. Maske initiated this action on September 8, 2009, by submitting to the Court an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254.

The Court must construe the Application liberally because Mr. Maske 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). However, the Court should not act as a *pro se* litigant's advocate. *Hall*, 935 F.2d at 1110. For the reasons stated below, the action will be dismissed as legally frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i).

Mr. Maske challenges his state conviction and sentence in Case No. 07GS163385 in the Denver, Colorado, County Court. Repetitious litigation of virtually identical causes of action may be dismissed as frivolous or malicious. *See Bailey v. Johnson*, 846 F.2d 1019, 1021 (5th Cir. 1988) (per curiam); *Van Meter v. Morgan*, 518 F.2d 366, 368 (8th Cir. 1975) (per curiam). The Court may consult its own records to

determine whether a pleading repeats pending or previously litigated claims. **See Duhart v. Carlson**, 469 F.2d 471 (10th Cir. 1972). The Court has examined its records and is satisfied that Mr. Maske's claims are repetitive of the claims he asserts in **Maske v. Estrada, et al.**, No. 09-cv-02163-BNB (D. Colo. Filed Sept. 10, 2009).

Mr. Maske has filed forty-three cases in this Court since March 2009. The Court has found in Mr. Maske's other cases that he simply is engaged in abusive litigation tactics, which will not be tolerated. This action, therefore, will be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(i).

The Court notes, however, that in **Maske v. IBM Corp.**, No. 09-cv-01805-BNB (D. Colo. Filed July 30, 2009), an order was entered, on September 3, 2009, directing Mr. Maske to show cause within thirty days why he should not be sanctioned from filing any further cases in this Court without representation of an attorney licensed to practice in the State of Colorado, unless he first obtains leave of the Court to proceed *pro se* in the action. Accordingly, it is

ORDERED that although the Application is denied and the action is dismissed as legally frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i), the dismissal will be without prejudice.

DATED at Denver, Colorado, this 23 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-02189-BNB

Jerry Maske
2705 Danube Way, Unit 101
Aurora, CO 80013

I hereby certify that I have mailed a copy of the **ORDER AND JUDGMENT** to the above-named individuals on 9/24/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk