

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-02271-BNB

DARREL ALAN HYBERG JR.,

Applicant,

v.

KEVIN MILYARD, and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

SEP 30 2009

GREGORY C. LANGHAM
CLERK

ORDER DIRECTING APPLICANT TO FILE AMENDED APPLICATION

Applicant, Darrel Alan Hyberg Jr., is a prisoner in the custody of the Colorado Department of Corrections who currently is incarcerated at the Sterling, Colorado, correctional facility. Mr. Hyberg has filed a *pro se* Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254, and has paid the \$5.00 filing fee.

The Court must construe the application liberally because Mr. Hyberg 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 (10th 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. Hyberg will be directed to file an amended application.

Mr. Hyberg is challenging the validity of his conviction and sentence in El Paso County District Court case number 01CR2042. However, he fails to provide a clear and concise statement of his claims in the application, which is twenty-four pages long, and which asserts six claims in addition to various sub-claims within his claims.

Mr. Hyberg may not assert a multitude of claims and sub-claims for relief and expect the Court and Respondents to sift through long and poorly organized allegations in an effort to determine the factual basis for each claim being asserted. Mr. Hyberg must delineate each claim and sub-claim in a manner that makes his claims readily apparent.

Mr. Hyberg will be ordered to file an amended application if he wishes to pursue his claims in this action. The Federal Rules of Civil Procedure apply to applications for habeas corpus relief. **See** Fed. R. Civ. P. 81(a)(2); ***Browder v. Director, Dep't of Corrections***, 434 U.S. 257, 269 (1978); ***Ewing v. Rodgers***, 826 F.2d 967, 969-70 (10th Cir. 1987). Pursuant to Fed. R. Civ. P. 8(a), a pleading "shall 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." Fed. R. Civ. P. 8(d)(1) 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. Prolix, vague, or unintelligible pleadings violate the requirements of Rule 8. Accordingly, it is

ORDERED that Mr. Hyberg file **within thirty (30) days from the date of this order** an amended application for a writ of habeas corpus that complies with this order. It is

FURTHER ORDERED that Mr. Hyberg's amended application shall be titled "Amended Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254" and shall be filed with the Clerk of the Court for the United States District Court for the

District of Colorado at the Alfred A. Arraj U.S. Courthouse, 901 Nineteenth Street, Room A-105, Denver, Colorado 80294-3589. It is

FURTHER ORDERED that the clerk of the Court mail to Mr. Hyberg, together with a copy of this order, two copies of the current version of the Court-approved form to be used filing the amended application pursuant to 28 U.S.C. § 2254. It is

FURTHER ORDERED that if Mr. Hyberg fails to file an amended application for a writ of habeas corpus that complies with this order within the time allowed, the application will be denied and the action dismissed without further notice. It is

FURTHER ORDERED that process shall not issue until further order of the Court.

DATED September 30, 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-02271-BNB

Darrel Alan Hyberg, Jr.
Prisoner No. 117079
Sterling Correctional Facility
PO Box 6000 - Unit 4A
Sterling, CO 80751

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 7/30/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk