

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-02495-BNB

STEVEN DOUGLAS McCARY,

Applicant, named as Defendant,

v.

PEOPLE OF THE STATE OF COLORADO,

Respondent, named as Plaintiff.

FILED  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

DEC 15 2009

GREGORY C. LANGHAM  
CLERK

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ORDER OF DISMISSAL

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Applicant Steven Douglas McCary initiated this action by filing *pro se* a "Petition to Proceed In Forma Pauperis Pursuant to Fed. R. Crim. P. 44" and a document titled "Fed. R. Civil P. 60(b) Relief from Judgment" in which he apparently challenges the validity of his state court conviction. In an order filed on October 23, 2009, Magistrate Judge Boyd N. Boland directed the clerk of the Court to commence a civil action and directed Mr. McCary to cure certain deficiencies if he wished to pursue his claims. Specifically, Magistrate Judge Boland ordered Mr. McCary to file on the proper forms a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action and an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254. Magistrate Judge Boland also ordered Mr. McCary to submit a certificate showing the current balance in his prison account. Mr. McCary was warned that the action would be dismissed without further notice if he failed to cure the deficiencies within thirty days.

On October 28, 2009, Mr. McCary filed an amended version of the document titled "Fed. R. Civil P. 60(b) Relief from Judgment." On November 9, 2009, Mr. McCary filed a letter to the Court in which he states that he is unable to obtain a certified copy of his inmate trust fund account statement despite his repeated requests. Even assuming Mr. McCary cannot obtain a certified copy of his inmate trust fund account statement as he alleges, he still has not cured the other deficiencies in this action. He has not filed on the proper forms a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action or an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 as directed by Magistrate Judge Boland and as required by the Court's local rules. **See** D.C.COLO.LCivR 8.2A. Blank copies of the proper forms were mailed to Mr. McCary with a copy of Magistrate Judge Boland's October 23 order. Therefore, the Court finds that Mr. McCary has failed to cure all of the deficiencies within the time allowed. Accordingly, it is

ORDERED that the documents titled "Fed. R. Civil P. 60(b) Relief from Judgment" are denied and the action is dismissed without prejudice for failure to cure the deficiencies. It is

FURTHER ORDERED that the "Petition to Proceed In Forma Pauperis Pursuant to Fed. R. Crim. P. 44" is denied as moot. It is

FURTHER ORDERED that no certificate of appealability will issue because Applicant has not made a substantial showing of the denial of a constitutional right.

DATED at Denver, Colorado, this 15 day of December, 2009.

BY THE COURT:

A handwritten signature in cursive script, reading "Zita Weinsienk". The signature is written in black ink and is positioned above a horizontal line.

ZITA LEESON WEINSHIENK, Senior Judge  
United States District Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

**CERTIFICATE OF MAILING**

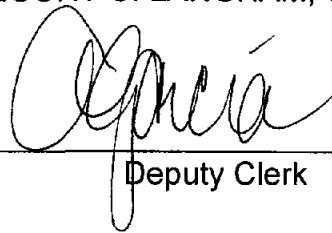
Civil Action No. 09-cv-02495-BNB

Steven Douglas McCary  
Prisoner No. 60886  
Fort Lyon Corr. Facility  
P.O. Box 1000 – Unit 5 Floor 3  
Fort Lyon, CO 81038-1000

I hereby certify that I have mailed a copy of the **ORDER AND JUDGMENT** to the  
above-named individuals on 12/15/09

GREGORY C. LANGHAM, CLERK

By: \_\_\_\_\_



Deputy Clerk