

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

JAN 7 - 2010

GREGORY C. LANGHAM
CLERK

Civil Action No. 09-cv-02521-BNB

CLEOTIS ARNELL LEWIS,

Applicant,

v.

JOHN W. SUTHERS, Attorney General for State of Colorado

Respondent.

ORDER OF DISMISSAL

Applicant, Cleotis Arnell Lewis, is a prisoner in the custody of the Colorado Department of Corrections at the Crowley County Correctional Facility in Olney Springs, Colorado. Mr. Lewis initiated this action by filing *pro se* a document titled "Motion for Court Appointment, Memorandum of Law and Brief in Support of Competent Legal Counsel" on October 19, 2009.

By order dated October 27, 2009, Magistrate Judge Boyd N. Boland directed the Clerk of the Court to commence a civil action and instructed Mr. Lewis to cure certain deficiencies if he wished to pursue his claims. Specifically, Magistrate Judge Boland ordered Mr. Lewis to submit a motion for leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 together with a certified copy of his trust fund account statement, and an Application for Writ of Habeas Corpus on the court-approved form.

Mr. Lewis filed a motion for leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 and an Application for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 on November 12, 2009. Magistrate Judge Boland granted Mr. Lewis leave to

proceed pursuant to § 1915 by order dated November 13, 2009. On November 17, 2009, Magistrate Judge Boland determined that Mr. Lewis' application was deficient, because it failed to assert clearly any claim demonstrating that his rights under the United States Constitution had been violated. Therefore, Mr. Lewis was ordered to file an amended application, and was warned that the action would be dismissed without further notice if he failed to file an amended pleading within thirty days.

On November 24, 2009, Magistrate Judge Boland's Order for an Amended Application was returned to the Court marked as "Refused." By minute order dated November 25, 2009, Magistrate Judge Boland directed the Clerk of the Court to remail the Order for an Amended Application to Mr. Lewis, as a second attempt to serve him. On December 4, 2009, the Order for an Amended Application was again returned to the Court marked as "Refused."

Mr. Lewis has not communicated with the Court since November 12, 2009, nor has he filed an amended application, as directed by Magistrate Judge Boland. As a result, he has failed to file an amended pleading within the time allowed. Therefore, the Application and action will be dismissed without prejudice. Accordingly, it is

ORDERED that the Application and this action are dismissed without prejudice for failure to cure all deficiencies within the time allowed.

DATED at Denver, Colorado, this 6th day of January, 2010.

BY THE COURT:



PHILIP A. BRIMMER
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 09-cv-02521-BNB

Cleotis Arnell Lewis
Reg No. 85892
Crowley County Corr. Facility
6564 State Hwy. 96
Olney Springs, CO 81062-8700

I hereby certify that I have mailed a copy of the **ORDER AND JUDGMENT** to the above-named individuals on 1/7/10

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk