

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-02521-BNB

CLEOTIS ARNELL LEWIS,

Applicant,

v.

JOHN W. SUTHERS, Attorney General for State of Colorado

Respondent.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

MAR 22 2010

GREGORY C. LANGHAM
CLERK

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 a *pro se* 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." Accordingly, noting that Mr. Lewis had not communicated with the Court since November 12, 2009, and that he had failed to file an amended application, on January 7, 2010, the Court dismissed the action without prejudice.

On January 25, 2010, Mr. Lewis filed a *pro se* motion titled "Motion and Notice of Motion to Set Aside Entry of Default," asking the Court to reconsider and vacate the Order of Dismissal and the Judgment filed in this action on January 7, 2010. In the Motion, Mr. Lewis asserted that he did not receive the November 17 Order for an Amended Application because the mail room at his facility erroneously returned the order to the Court without his knowledge. The Court construed the filing as a Motion to Reconsider pursuant to Fed. R. Civ. P. 59(e). Finding that Mr. Lewis had alleged that he was denied the right to cure a deficiency in this action due to an error outside of his control, the Court granted the motion to reconsider and reinstated Mr. Lewis' case on

February 12, 2010. The February 12 Order further directed Mr. Lewis to file an amended application within thirty days that complied with the directives of the November 17 Order for an Amended Application. The Court warned Mr. Lewis that if he failed to file an amended application within the time allowed, the application and the action would be dismissed without further notice.

Mr. Lewis has not communicated with the Court since January 25, 2010, nor has he filed an amended application, as directed by the February 12, 2010, and November 17, 2009, Orders. Further, no mail has been returned to the Court as undeliverable. As a result, Mr. Lewis has now 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 22nd day of March, 2010.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge, for
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-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 3/22/10

GREGORY C. LANGHAM, CLERK

By 

Deputy Clerk