

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-02521-BNB

CLEOTIS ARNELL LEWIS,

Applicant,

v.

DICK SMELSER, Warden, and
JOHN W. SUTHERS, Attorney General for State of Colorado,

Respondents.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

NOV 17 2009

GREGORY C. LANGHAM
CLERK

ORDER DIRECTING APPLICANT TO FILE AMENDED APPLICATION

Applicant, Cleotis Arnell Lewis, is a prisoner in the custody of the Colorado Department of Corrections at the Crowley County Correctional Facility. Mr. Lewis has filed *pro se* an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 challenging the validity of his conviction and sentence in Denver County District Court case number 98-CR-855.

The Court must construe the application liberally because Mr. Lewis 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. Lewis will be ordered to file an amended application.

The court has reviewed the habeas corpus application and finds that it is deficient because Mr. Lewis fails to assert clearly any claim demonstrating that his

rights under the United States Constitution have been violated. Mr. Lewis asserts one claim for relief in which he asserts that his identity was stolen by the person who actually committed the crime for which Mr. Lewis was charged. These vague and conclusory allegations do not demonstrate that Mr. Lewis' rights under the United States Constitution have been violated in any way and the documents submitted by Mr. Lewis in support of the application do not assist the Court in its efforts to decipher the claim he is raising in this action. Therefore, Mr. Lewis will be ordered to file an amended application in which he alleges, clearly and concisely, the specific claim or claims for relief he is asserting in this action.

Mr. Lewis is reminded that he also must provide factual support for the claim or claims he raises. Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts requires that Mr. Lewis go beyond notice pleading. **See *Blackledge v. Allison***, 431 U.S. 63, 75 n.7 (1977). He must allege specific facts to support each asserted claim. Naked allegations of constitutional violations are not cognizable under 28 U.S.C. § 2254. **See *Ruark v. Gunter***, 958 F.2d 318, 319 (10th Cir. 1992) (per curiam). Accordingly, it is

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

FURTHER ORDERED that the clerk of the court mail to Mr. Lewis, together with a copy of this order, two copies of the following form: Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254. It is

FURTHER ORDERED that, if Mr. Lewis fails within the time allowed to file an amended application as directed, the application will be denied and the action will be dismissed without further notice.

DATED November 17, 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-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 **two copies of the Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254** to the above-named individuals on 11/17/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk