

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-02603-BNB

CLIFFORD N. WOODS,

Applicant,

v.

LARRY REID, Warden,

Respondent.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

DEC 04 2009

GREGORY C. LANGHAM
CLERK

ORDER DIRECTING APPLICANT TO FILE AMENDED PLEADING

Applicant, Clifford N. Woods, is a prisoner in the custody of the Colorado Department of Corrections at the Trinidad, Colorado, Correctional Facility. Mr. Woods, acting *pro se*, has filed an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 challenging a state court conviction and sentence.

The Court must construe the Application liberally because Mr. Woods 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. Woods will be ordered to file an amended pleading.

The Court has reviewed the Application and finds that it is deficient. The claims Mr. Woods raises must be asserted pursuant to 28 U.S.C. § 2254 because he is challenging the validity, and not the execution, of a state conviction and sentence. Mr. Woods specifically asserts that (1) his speedy trial rights were violated; (2) the trial court lacked jurisdiction; and (3) he was denied presentence confinement credit.

The Court previously has instructed Mr. Woods regarding the proper action to file with this Court when he is asserting claims that challenge the validity of his conviction and sentence. **See Woods v. Arellano**, No. 09-cv-00238-ZLW at Doc. No. 11 (D. Colo. Aug. 6, 2009), **appeal pending**, No. 09-1419 (10th Cir. filed Sept. 21, 2009). Mr. Woods also was instructed that he must first exhaust his state court remedies prior to filing a § 2254 action in this Court. Nonetheless, Mr. Woods will be directed to file an amended pleading on the proper form. Accordingly, it is

ORDERED that the action is construed as filed pursuant to 28 U.S.C. § 2254. It is

FURTHER ORDERED that **within thirty days from the date of this Order** Mr. Woods file an amended pleading on a Court-approved form that is used in filing 28 U.S.C. § 2254 actions. It is

FURTHER ORDERED that the Clerk of the Court mail to Mr. Woods, 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.

DATED December 4, 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-02603-BNB

Clifford N. Woods
Prisoner No. 81438
CMC-FMCC
P.O. Box 300 - Unit 4C
Cañon City, CO 81215-0300

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 12/4/07

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk