

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-02942-BNB

RYAN DARNELL CUNNINGHAM,

Applicant,

v.

ADAMS COUNTY DISTRICT COURTS,

Respondent.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

FEB 10 2010

GREGORY C. LANGHAM
CLERK

ORDER DIRECTING APPLICANT TO FILE AMENDED APPLICATION

Applicant, Ryan Darnell Cunningham, is a prisoner in the custody of the Colorado Department of Corrections at the Buena Vista Correctional Facility in Buena Vista, Colorado. Mr. Cunningham has filed *pro se* on February 8, 2010, an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 challenging the validity of his conviction in Adams County District Court case number 08CR1382.

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

The court has reviewed the application and finds that it is deficient. First, Mr. Cunningham fails to name a proper Respondent. The law is well-established that the only proper respondent to a habeas corpus action is the applicant's custodian. *See* 28

U.S.C. § 2242; Rules 2(a) and 1(b), Rules Governing Section 2254 Cases in the United States District Courts; *Harris v. Champion*, 51 F.3d 901, 906 (10th Cir. 1995). Because Mr. Cunningham alleges he is incarcerated at the Buena Vista Correctional Facility, it appears that the warden of that facility should be named as Respondent in this action.

The Court also finds that the application is deficient because Mr. Cunningham fails to provide a clear statement of each claim he is raising in this action. For example, it appears that Mr. Cunningham's first claim for relief actually consists of a number of distinct claims of trial court errors and ineffective assistance of counsel. However, the court cannot determine precisely what claims are being asserted because Mr. Cunningham fails to provide specific facts in support of each asserted claim of error. Mr. Cunningham similarly fails to allege specific facts in support of other claims in the application as well.

Therefore, if Mr. Cunningham wishes to pursue his claims in this action, he must file an amended application. He must name his custodian as Respondent and he must clarify exactly what federal claims he is raising and he must provide specific factual allegations in support of each asserted claim. Mr. Cunningham is advised that § 2254 provides a remedy only for violations of the "Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). Pursuant to Rules 2(c)(1) and 2(c)(2) of the Rules Governing Section 2254 Cases in the United States District Courts, Mr. Cunningham must "specify all [available] grounds for relief" and he must "state the facts supporting each ground." Furthermore, these habeas corpus rules are more demanding than the rules applicable to ordinary civil actions, which require only notice pleading. **See *Mayle***

v. Felix, 545 U.S. 644, 655 (2005). Naked allegations of constitutional violations are not cognizable under § 2254. *See Ruark v. Gunter*, 958 F.2d 318, 319 (10th Cir. 1992) (per curiam). Accordingly, it is

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

DATED February 10, 2010, 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

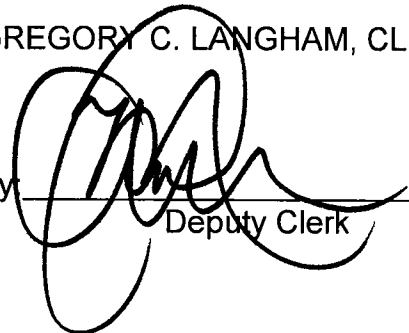
Civil Action No. 09-cv-02942-BNB

Ryan D. Cunningham
Prisoner No. 102635
Buena Vista Corr. Facility
PO Box 2017
Buena Vista, CO 81211

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 2/10/10

GREGORY C. LANGHAM, CLERK

By



Deputy Clerk