

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-03000-BNB

SCOTT FIRTH,

Applicant,

v.

RICHARD SMELSER, and  
THE ATTORNEY GENERAL OF THE STATE OF COLORADO JOHN W. SUTHERS,

Respondents.

FILED  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO  
JAN 04 2010  
GREGORY C. LANGHAM  
CLERK

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ORDER DIRECTING APPLICANT TO FILE AMENDED APPLICATION

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Applicant, Scott Firth, is a prisoner in the custody of the Colorado Department of Corrections who currently is incarcerated at the Crowley County Correctional Facility in Olney Springs, Colorado. Mr. Firth has filed *pro se* an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 and a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action.

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

Mr. Firth was convicted in Archuleta County, Colorado, district court case number 02CR68 pursuant to a plea of guilty to sexual assault on a child fifteen to seventeen years of age by one in a position of trust, a class-four felony. He was sentenced to sixty

days in the Archuleta County Jail, followed by probation for a term of ten years to life. However, Mr. Firth does not appear to be challenging his original conviction. Rather, he appears to be challenging the revocation of his probation and his sentence to an indeterminate term of six years to life in the DOC. However, he fails to provide a clear and concise statement of his claims in the application itself, which asserts six claims and refers to an eighty-eight-page memorandum of law for a discussion of those six claims.

Mr. Firth's application is unnecessarily verbose. In addition, only claims two through five clearly attack the revocation of his probation. Therefore, Mr. Firth will be ordered to file an amended application if he wishes to pursue his claims in this action. The Federal Rules of Civil Procedure apply to applications for habeas corpus relief. **See** Fed. R. Civ. P. 81(a)(2); ***Browder v. Director, Dep't of Corrections***, 434 U.S. 257, 269 (1978); ***Ewing v. Rodgers***, 826 F.2d 967, 969-70 (10th Cir. 1987). Pursuant to Fed. R. Civ. P. 8(a), a pleading "shall contain (1) a short and plain statement of the grounds for the court's jurisdiction, . . . (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for the relief sought." Fed. R. Civ. P. 8(d)(1) provides that "[e]ach allegation must be simple, concise, and direct." Taken together, Rules 8(a) and (d)(1) underscore the emphasis placed on clarity and brevity by the federal pleading rules. Prolix, vague, or unintelligible pleadings violate the requirements of Rule 8. Accordingly, it is

ORDERED that Applicant, Scott Firth, file **within thirty (30) days from the date of this order** an amended application for a writ of habeas corpus that complies with this order. It is

FURTHER ORDERED that Mr. Firth's amended application shall be titled, "Amended Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254," and shall be filed with the Clerk of the Court for the United States District Court for the District of Colorado at the Alfred A. Arraj U.S. Courthouse, 901 Nineteenth Street, Room A-105, Denver, Colorado 80294-3589. It is

FURTHER ORDERED that the clerk of the Court mail to Ms. Firth, together with a copy of this order, two copies of the Court-approved form to be used filing the amended application pursuant to 28 U.S.C. § 2254. It is

FURTHER ORDERED that if Mr. Firth fails to file an amended application for a writ of habeas corpus that complies with this order within the time allowed, the application will be denied and the action dismissed without further notice.

DATED January 4, 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-03000-BNB

Scott Firth  
Prisoner No. 121488  
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 1/4/10

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk