

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-00138-BNB

FILED  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

STEVEN A. MANTHEY,

MAY 19 2010

Petitioner,

GREGORY C. LANGHAM  
CLERK

v.

ADAMS COUNTY SHERIFF DOUG DARR, and  
THE HONORABLE JOHN SUTHERS, ATTORNEY GENERAL FOR THE STATE OF  
COLORADO,

Respondents.

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ORDER OF DISMISSAL

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Petitioner, Steven A. Manthey, initiated this action by filing, through counsel, an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 and a Motion Pursuant to 28 U.S.C. § 2251 for Stay of Execution of Sentence on January 22, 2010. He has paid the \$5.00 filing fee.

On January 22, 2010, the Court granted Mr. Manthey's Motion for Stay of Execution of Sentence. In doing so, the Court stayed the execution of Mr. Manthey's forty-five day sentence in Adams County District Court Case No. 2006CR254, pending the resolution of the habeas corpus action in this court.

On January 27, 2010, Magistrate Judge Boyd N. Boland found that the Application was deficient because Mr. Manthey failed to allege any factual support for the seven claims asserted in his Application. Noting that naked allegations of constitutional violations devoid of factual support are not cognizable in a federal habeas

corpus action, *see Ruark v. Gunter*, 958 F.2d 318, 319 (10th Cir. 1992) (per curiam), Magistrate Judge Boland ordered Mr. Manthey to file an Amended Application within thirty days. Mr. Manthey was warned that the action would be dismissed without further notice if he failed to file an amended pleading within thirty days.

Mr. Manthey's counsel, Themia Sandven, filed a motion for extension of time to file the Amended Application on March 2, 2010, which was granted by minute order dated March 3, 2010. Ms. Sandven filed a second motion for extension of time on March 9, 2010, which was granted by minute order dated March 10, 2010. Ms. Sandven filed a third motion for extension of time to file the Amended Application on March 16, 2010, which was granted by minute order dated March 17, 2010. The March 17 minute order directed Ms. Sandven to file the Amended Application on or before March 23, 2010, and warned her that no further extensions of time would be granted unless good cause was shown.

On March 23, 2010, Ms. Sandven filed a pleading titled "State Prisoner Self-Help Packet." The pleading appeared to be a packet from the United States District Court for the District of Idaho that provides instructions to prisoners for use in filing a habeas corpus actions in the District of Idaho. The habeas petition included in the packet was entirely blank and did not contain any of Mr. Manthey's claims. On March 25, 2010, the clerk of the court filed a docket entry with regard to Ms. Sandven's March 23 filing. The docket entry states, "[t]he pdf attached to this entry is a forms packet from another U.S. District Court. Counsel will re-file with the amended application attached."

On April 9, 2010, Magistrate Judge Boland noted that Ms. Sandven had failed to re-file an Amended Application on the court-approved form that alleged both the claims

Mr. Manthey seeks to raise and the specific facts in support of his claims, as directed by the Court's January 27 Order for an Amended Application. Magistrate Judge Boland also noted that Ms. Sandven had not communicated with the Court since March 23, 2010, and had failed to request any additional extensions of time to file the Amended Application. However, because the execution of Mr. Manthey's criminal sentence was stayed pending the resolution of the action, Magistrate Judge Boland ordered Mr. Manthey, through his counsel, to show cause why the action should not be dismissed for failure to file an amended application. In the response to the order to show cause, Mr. Manthey's counsel was directed to provide documentation to the Court demonstrating that Mr. Manthey was aware of her failure to file the Amended Application and aware of the potential implications to his criminal case. Mr. Manthey was warned that the failure to respond to the order to show cause would result in the dismissal of the action without further notice.

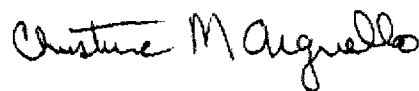
Mr. Manthey has now failed to respond to the Order to Show Cause. Further, he has not filed Amended Application for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254, as directed by Magistrate Judge Boland, nor has he communicated with the Court since March 23, 2010. As a result, he has failed to file 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 respond to the order to show cause and failure to file an amended pleading within the time allowed. It is

FURTHER ORDERED that the Order Granting Motion for Emergency Stay of  
Petitioner's sentence in the underlying criminal action (Doc. # 3) is VACATED.

DATED at Denver, Colorado, this 19th day of May, 2010.

BY THE COURT:



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CHRISTINE M. ARGUELLO  
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**

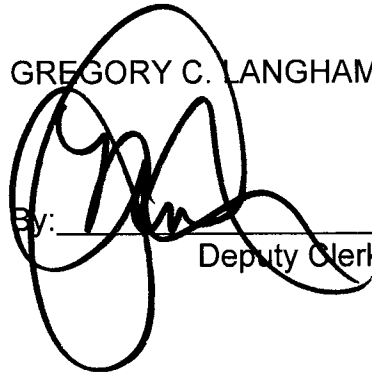
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Themia E. Sandven  
Attorney at Law

**DELIVERED ELECTRONICALLY**

I hereby certify that I have mailed a copy of the **ORDER AND JUDGMENT** to the above-named individuals on 5/19/10

GREGORY C. LANGHAM, CLERK

By:  \_\_\_\_\_  
Deputy Clerk