

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-00282-BNB

DEMARCO JAMAAL WHITE,

Applicant,

v.

STEVE HARTLEY, Warden,
TRAVIS TRANI, Warden, L.C.F., and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

FEB 25 2010

GREGORY C. LANGHAM
CLERK

ORDER DIRECTING APPLICANT TO FILE AMENDED APPLICATION

Applicant, DeMarco Jamaal White, is a prisoner in the custody of the Colorado Department of Corrections who currently is incarcerated at the Limon, Colorado, correctional facility. Mr. White initiated this action on February 10, 2010, by filing *pro se* an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging the validity of his conviction in Denver District Court case number 02CR1462. He has paid the \$5.00 filing fee for a habeas corpus action.

On February 18, 2010, Mr. White filed a document titled "Supplement to Applicant's 28 U.S.C. § 2254 Habeas Application," in which he asserts an additional claim. The Court filed the supplement in the instant action because this is Mr. White's only pending habeas corpus action in this Court. However, the supplement does not contain a docket number, which the Court warned Mr. White in the February 10 order to commence and cure to include in any future papers sent to the Court. In addition, he names a different Respondent, Travis Trani, in the caption to the supplement, than he

does in the caption to the original application, which names Steve Hartley as Respondent.

Therefore, Mr. White will be directed to file an amended habeas corpus application that contains all the claims he wishes to assert and the docket number for this action. Mr. White also should name his warden as 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).

The amended application Mr. White will be directed to file should comply with Rule 8 of the Federal Rules of Civil Procedure. 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" The philosophy of Rule 8(a) is reinforced by Rule 8(d)(1) which 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. Rule 4 of the Rules Governing Section 2254 Cases also requires Mr. White to go beyond notice pleading. **See Blackledge v. Allison**, 431 U.S. 63, 75 n.7 (1977). He must clearly allege his claims, and he must

allege specific facts to support each asserted claim. 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 Applicant, DeMarco Jamaal White, file **within thirty (30) days from the date of this order** an amended application that complies with the directives of this order. It is

FURTHER ORDERED that Mr. White'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 Mr. White, together with a copy of this order, two copies of the following form to be used in filing the amended application: Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254. It is

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

DATED February 25, 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. 10-cv-00282-BNB

Demarco Jamaal White
Prisoner No. 122323
Limon Correctional Facility
49030 State Hwy. 71
Limon, CO 80826

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 2/25/10

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk