

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-00418-BNB

**FILED**  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

GENE ALLEN,

MAR 19 2010

Applicant,

GREGORY C. LANGHAM  
CLERK

v.

THE PEOPLE OF THE STATE OF COLORADO,  
ADAMS COUNTY COURT, Brighton, Colo.  
THE SUPREME COURT OF THE STATE OF COLO.,  
L.C.C. IN THE STATE OF N.D.O.C.,  
WARDEN JACK PALMER, and  
JOHN SUTHERS, The Attorney General of the State of Colorado,

Respondents.

---

ORDER OF DISMISSAL

---

Applicant, Gene Allen, is a prisoner in the custody of the Nevada Department of Corrections (DOC) who currently is incarcerated at the Lovelock Correctional Center in Lovelock, Nevada. Mr. Allen, acting *pro se*, filed an Application for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. The Court must construe the Application liberally because Mr. Allen 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). The Court, however, cannot act as an advocate for a *pro se* litigant. *See Hall*, 935 F.2d at 1110. For the reasons stated below, the Court will dismiss the action.

Mr. Allen has filed at least three previous § 2254 actions in this Court relating to his Colorado conviction in Criminal Case No. 1993-CR-001593, which have been denied. The United States Court of Appeals for the Tenth Circuit upheld this Court's

denials of the previous actions and has denied Mr. Allen authorization to file a second or successive § 2254 application. **See, e.g., Allen v. Colorado**, 205 F. App'x 675 (10th Cir. 2006); **Allen v. Suthers**, No. 08-1245 (10th Cir. Oct. 30, 2008) (unpublished order denying certificate of appealability); **see also In re Allen**, No. 08-1021 (10th Cir. Feb. 29, 2008) (unpublished order denying Allen authorization to file a second or successive § 2254 habeas petition); **In re Allen**, No. 08-1464 (10th Cir. Dec. 9, 2008) (same); **Allen v. People of the State of Colo.**, No. 09-1413 (10th Cir. Jan. 11, 2010) (appeal dismissed as unauthorized second or successive § 2254 petition). The instant § 2254 Application again challenges Mr. Allen's Criminal Case No. 1993-CR-001593 and requires authorization by the circuit court.

In the absence of such authorization, this Court lacks jurisdiction to consider the merits of the claims asserted in a second or successive § 2254 action. **In re Cline**, 531 F.3d 1249, 1251 (10th Cir. 2008). The Court must either dismiss the § 2254 action for lack of jurisdiction or, if it is in the interest of justice, transfer the matter to the circuit court pursuant to 28 U.S.C. § 1631. **In re Cline**, 531 F.3d at 1252. The factors for considering whether a transfer is in the interest of justice include:

whether the claims would be time barred if filed anew in the proper forum, whether the claims alleged are likely to have merit, and whether the claims were filed in good faith or if, on the other hand, it was clear at the time of filing that the court lacked the requisite jurisdiction.

**Id.** at 1251.

This action is another unauthorized second or successive application, and a transfer to the circuit court would not be in the interest of justice based on the previous

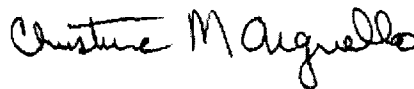
findings by this Court and the circuit court. Therefore, the Court will dismiss the action for lack of jurisdiction.

Mr. Allen also is warned that if he continues to file § 2254 applications with respect to his Colorado conviction in Criminal Case No. 1993-CR-001593 the Court will consider filing restrictions. ***Topeka Housing Auth. v. Johnson***, 404 F.3d 1245, 1248 (10th Cir. 2005) (plaintiff's status as a ***pro se*** litigant does not prevent the court from imposing sanctions) (citing ***Haworth v. Royal***, 347 F.3d 1189, 1192 (10th Cir. 2003)). Accordingly, it is

ORDERED that the Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 is DENIED for lack of jurisdiction and the action is dismissed. It is FURTHER ORDERED that all pending motions are denied as moot.

DATED at Denver, Colorado, this 18th day of March, 2010.

BY THE COURT:



---

CHRISTINE M. ARGUELLO,  
United States District Court, for  
ZITA LEESON WEINSHIENK, Senior Judge  
United States District Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

**CERTIFICATE OF MAILING**

Civil Action No. 10-cv-00418-BNB

Gene Allen  
Prisoner No. 76542  
Lovelock Correctional Center  
1200 Prison Rd.  
Lovelock, NV 89419

I hereby certify that I have mailed a copy of the **ORDER AND JUDGMENT** to the  
above-named individuals on 3/19/10

GREGORY C. LANGHAM, CLERK

By  \_\_\_\_\_

Deputy Clerk