

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-00597-BNB

FILED  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

MICHAEL WAYNE FLEMING,

JUN 30 2010

Applicant,

GREGORY C. LANGHAM  
CLERK

v.

THE PEOPLE OF THE STATE OF COLORADO, and  
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

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ORDER OF DISMISSAL

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Michael Wayne Fleming currently resides in Wheatridge, Colorado. Mr. Fleming, acting *pro se*, initiated this action by submitting a Letter to the Court stating his intent to file a habeas corpus action to appeal a Colorado court decision. On March 16, 2010, Magistrate Judge Boyd N. Boland directed the Clerk of the Court to commence a civil action and instructed Mr. Fleming to cure certain deficiencies if he wished to pursue his claims. Specifically, Magistrate Judge Boland ordered Mr. Fleming to submit his claims on a Court-approved form used in filing 28 U.S.C. § 2254 actions and to provide a Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 or in the alternative pay the \$5.00 filing fee.

On May 19, 2010, Mr. Fleming filed his claims on a proper Court-approved form and submitted a Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915. The § 1915 Motion, however, was not properly notarized. Mr. Fleming indicated on Page Four of the Motion that he was unable to find a notary public.

Magistrate Judge Boland, therefore, entered an order on May 20, 2010, instructing Mr. Fleming that if he is unable to have the Motion notarized he may in the alternative, pursuant to 28 U.S.C. § 1746, elect to provide an unsworn declaration under penalty of perjury to attest to the truthfulness of the § 1915 Motion. The Clerk of the Court also sent to Mr. Fleming a copy of § 1746.

The envelope containing the May 20 Order, however, was returned to Court on May 24, 2010, marked "Return to Sender No Such Number Unable to Forward." The Court determined that the May 20 Order inadvertently was mailed to the wrong address and directed the Clerk of the Court to resend the Order to the correct address on May 25, 2010. Mr. Fleming was given an additional thirty days from the May 25 Minute Order to cure the deficiency identified in the May 20 Order. Mr. Fleming now has failed to communicate with the Court, and as a result he has failed to cure the deficiency within the time allowed. Accordingly, it is

ORDERED that the action is dismissed without prejudice for failure to cure the deficiency within the time allowed.

DATED at Denver, Colorado, this 29th day of June, 2010.

BY THE COURT:

s/Philip A. Brimmer  
PHILIP A. BRIMMER  
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**

Civil Action No. 10-cv-00597-BNB

Michael Wayne Fleming  
4228 Jellison St.  
Wheatridge, CO 80033

I hereby certify that I have mailed a copy of the **ORDER AND JUDGMENT** to the above-named individuals on 6/30/10

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk