

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-00724-BNB

DWAYNE A. HUDSON,

Applicant,

v.

COLORADO DEPT. OF CORR. EXECUTIVE DIRECTOR ARI ZAVARAS, by and  
Through Adult Division of Parole Services,  
WILLIAM LOVINGER, Undersheriff of Denver County Jail, and  
JOHN SUTHERS, The Attorney General of the State of Colorado,

Respondents.

FILED  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

MAY 04 2010

GREGORY C. LANGHAM  
CLERK

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ORDER DIRECTING APPLICANT TO FILE SECOND AMENDED APPLICATION

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Applicant, Dwayne A. Hudson, currently is incarcerated at the Denver County Jail. He has filed *pro se* an amended Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254, and has been granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915.

The Court must construe the amended application liberally because Mr. Hudson 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. Hudson will be directed to file a second amended application.

Mr. Hudson is challenging the validity of his conviction and sentence in Denver District Court case number 04CR3106. However, he fails to provide a clear and

concise statement of his claims in the application, which is twenty-eight pages long and asserts three claims. Mr. Hudson may not expect the Court and Respondents to sift through long and poorly organized allegations in an effort to determine the factual basis for each claim being asserted. His application is verbose and confusing.

Therefore, Mr. Hudson will be ordered to file a second 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. In addition, Mr. Hudson is reminded 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). It is not clear to the Court how Mr. Hudson simultaneously can be in the custody of the Colorado Department of Corrections and the Denver County Jail. Accordingly, it is

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

FURTHER ORDERED that Mr. Hudson's second amended application shall be titled "Second 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. Hudson, together with a copy of this order, two copies of the current version of the Court-approved form to be used filing the second amended application pursuant to 28 U.S.C. § 2254. It is

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

FURTHER ORDERED that process shall not issue until further order of the Court.

DATED May 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. 10-cv-00724-BNB

Dwayne A. Hudson  
Prisoner No. 0000251981  
Denver County Jail  
P.O. Box 1108  
Denver, CO 80210

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 5/4/10

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk