

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-01755-BNB

STEVEN A. MANTHEY,

Petitioner,

v.

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

Respondents.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

JUL 29 2010

GREGORY C. LANGHAM
CLERK

ORDER DENYING MOTION FOR EMERGENCY STAY

Petitioner, Steven A. Manthey, has filed a *pro se* 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 set to Commence on Monday, July 26, 2010 ("Motion for Emergency Stay"). He has paid the \$5.00 filing fee.

Mr. Manthey alleges that he was convicted in Adams County District Court Case No. 2006CR254 in April 2007, and that he was sentenced to five years of probation, together with ninety days incarceration in the county jail, with forty-five days suspended, on condition of compliance with terms of the probation. He further alleges that he has remained free on bail pending the conclusion of his direct appeal in state court, which ended on September 21, 2009, when the Colorado Supreme Court denied his petition for writ of certiorari. Mr. Manthey asserts that he is scheduled to appear in state court on July 26, 2010, at which time he will be required to begin serving his sentence.

Mr. Manthey has previously filed an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 and a Motion for an Emergency Stay in this Court, located at Case No. 10-cv-00138-ZLW. In order to address Mr. Manthey's motion for emergency stay, the Court finds that it is necessary to detail the events that took place in Mr. Manthey's previous habeas action.

Mr. Manthey initiated action 10-cv-00138-ZLW by filing, through counsel, an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 and a Motion for Emergency Stay on January 22, 2010. On January 22, 2010, the Court granted Mr. Manthey's Motion for Stay of Execution of Sentence, based upon the short length of his 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.

On January 27, 2010, Magistrate Judge Boyd N. Boland found that the Application filed in 10-cv-00138-ZLW was deficient because Mr. Manthey had 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 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 document titled "State Prisoner Self-Help Packet." The document 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 sought 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. 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.

Nonetheless, neither Mr. Manthey or his counsel filed a response to the Order to Show Cause. Accordingly, on May 19, 2010, the Court entered an order dismissing Case No. 10-cv-00138-ZLW without prejudice for failure to respond to the Order to Show Cause and failure to file an amended pleading within the time allowed. The May 19 Order of Dismissal also vacated the Order Granting Motion for Emergency Stay of Mr. Manthey's sentence in the underlying criminal action. Mr. Manthey has not filed any additional pleadings in Case No. 10-cv-00138-ZLW.

Thereafter, approximately two months following the Court's dismissal of 10-cv-00138-ZLW, Mr. Manthey filed the instant action on July 23, 2010. He again requests that the Court stay the execution of his state court criminal sentence, set to commence on the next business day after his filing, July 26, 2010. Mr. Manthey also filed a *pro se* Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254. However, like the Application for a Writ of Habeas Corpus filed in Case No. 10-cv-00138-ZLW, Mr. Manthey's Application in this case is devoid of any claims or supporting factual allegations. Instead, Mr. Manthey merely details his state court proceedings and requests as relief that his conviction be overturned.

The Court has the authority to "stay any proceeding against the person detained in any State court or by or under the authority of any State for any matter involved in the habeas corpus proceeding." 28 U.S.C. § 2251. In the Motion for Emergency Stay, Mr.

Manthey requests that his sentence be stayed “in order to allow consideration of the Petition on the merits” Motion at 2. However, because Mr. Manthey has not asserted any claims in the Application, nor provided any supporting factual allegations, there are currently no merits for the Court to consider. This failure is especially mystifying in light of the Court’s dismissal of Mr. Manthey’s previous action for failure to file an amended pleading containing all of Mr. Manthey’s claims and factual allegations in support of those claims.

Mr. Manthey has previously received a stay of his state court criminal sentence in Case No. 10-cv-00138, and he failed to take advantage of that stay by pursuing that case on the merits. Instead, Mr. Manthey has now filed, at the eleventh hour, a deficient Application and a second attempt to delay his state court proceedings. The Court is not sympathetic to this last minute request. Further, in light of the fact that Mr. Manthey’s 45-day jail sentence includes a 5-year term of probation, the Court finds that Mr. Manthey will have ample and adequate time to challenge his conviction, even after his 45-day jail sentence has been served. For these reasons, the Motion for Emergency Stay will be denied. Mr. Manthey will be ordered to file an Amended Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 by separate order. Accordingly, it is

ORDERED that the Motion for an Emergency Stay filed on July 23, 2010, is
DENIED.

DATED at Denver, Colorado, this 28th day of July, 2010.

BY THE COURT:



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

Civil Action No. 10-cv-01755-BNB

Steven A. Matheny
5305 E. 78th Place #205
Arvada, CO 80003

I hereby certify that I have mailed a copy of the **ORDER AND JUDGMENT** to the
above-named individuals on 7/29/10

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk