

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-01821-BNB

SCOTT EDWARD LOISELL, CDOC No. 146663,

Plaintiff,

v.

ARISTEDES ZAVARAS, Executive Director for CDOC is Sued in his Individual and
Official Capacities, and
RICHARD DICK SMELSER, Warden of CCCF is Sued in his Individual and Official
Capacities,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

AUG 25 2010

GREGORY C. LANGHAM
CLERK

ORDER DIRECTING PLAINTIFF TO FILE AMENDED PLEADING

Plaintiff, Scott Edward Loisell, is serving a state court sentence with the Colorado Department of Corrections (CDOC) at the Crowley County Correctional Facility. Mr. Loisell initiated this action by filing *pro se* a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 on July 26, 2010. Mr. Loisell filed a Prisoner Complaint on August 2, 2010. The Court granted Mr. Loisell leave to proceed pursuant to 28 U.S.C. § 1915 on August 2, 2010.

The Court must construe the Prisoner Complaint liberally because Mr. Loisell 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.

The Court has reviewed the Prisoner Complaint filed by Mr. Loisell and finds that it is deficient. The claims Mr. Loisell raises in this action must be asserted pursuant to

28 U.S.C. § 2241 because those claims call into question the execution, and not the validity, of Mr. Loisell's sentence. **See *Montez v. McKinna***, 208 F.3d 862, 865 (10th Cir. 2000). More specifically, Mr. Loisell asserts that he is entitled to presentence confinement credit that the CDOC has not applied to his sentence. Therefore, Mr. Loisell will be directed to file an amended pleading on the proper form if he wishes to pursue his claims challenging the execution of his sentence. In addition, Executive CDOC Director Aristedes Zavaras is not a proper party to this action. Mr. Loisell 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). Accordingly, it is

ORDERED that Mr. Loisell file an amended pleading on the proper form **within thirty (30) days from the date of this order**. It is

FURTHER ORDERED that the clerk of the court mail to Mr. Loisell, together with a copy of this order, two copies of the following form: Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241. It is

FURTHER ORDERED that if Mr. Loisell fails within the time allowed to file an amended pleading as directed, the action will be dismissed without further notice.

DATED August 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-01821-BNB

Scott Edward Loisel
Prisoner No. 146663
Crowley County Corr. Facility
6564 State Hwy. 96
Olney Springs, CO 81062-8700

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. § 2241** to the above-named individuals on 8/21/10

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk