

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-02563-BNB

RONALD M. APODACA,

Applicant,

v.

RAE TIMME, and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO
DEC -7 2010
GREGORY C. LANGHAM
CLERK

ORDER OF DISMISSAL

Applicant, Ronald M. Apodaca, is a prisoner in the custody of the Colorado Department of Corrections who currently is incarcerated at the Fremont Correctional Facility in Cañon City, Colorado. He submitted to the Court *pro se* a "Petition for Violation of Constitutional Rights Under the 14th, 6th, and 5th Amendments" challenging his state court conviction and sentence.

In an order filed on October 20, 2010, Magistrate Judge Boyd N. Boland directed Mr. Apodaca to cure certain enumerated deficiencies in this case within thirty days. Specifically, Mr. Apodaca was directed either to pay the \$5.00 filing fee or to submit a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action on the Court-approved form together with a certificate of the warden or other appropriate jail officer as to the amount of money on deposit in his inmate trust fund account. He was informed that the § 1915 motion and affidavit only was necessary if the \$5.00 filing fee was not paid in advance.

On December 3, 2010, Mr. Apodaca attempted to cure the deficiencies by filing a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action together with an uncertified inmate banking statement showing the amount of money on deposit in his inmate trust fund account. He also filed an Application for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 and a motion titled "Motion to File Without Payment of Filing Fee and Supporting Affidavit."

Rule 3 of the Rules Governing Section 2254 Cases in the United States District Courts requires a "certificate of the warden or other appropriate officer of the institution in which the petitioner is confined as to the amount of money or securities on deposit to the petitioner's credit in any account in the institution." The Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action also notes this requirement. The uncertified inmate banking statement that Mr. Apodaca filed on December 3 showing the amount of money on deposit in his inmate trust fund account fails to meet this requirement.

Accordingly, it is

ORDERED that the Application for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 and "Petition for Violation of Constitutional Rights Under the 14th, 6th, and 5th Amendments" are denied and the action dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for the failure of Applicant, Ronald M. Apodaca, within the time allowed, to cure all the deficiencies designated in the October 20, 2010, order. It is

FURTHER ORDERED that the Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action and motion titled "Motion to File Without Payment of Filing Fee and Supporting Affidavit" are denied as moot. It is

FURTHER ORDERED that no certificate of appealability will issue because Applicant has not made a substantial showing of the denial of a constitutional right.

DATED at Denver, Colorado, this 7th day of December,
2010.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK
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-02563-LTB

Ronald M. Apodaca
Prisoner No. 132741
Fremont Corr. Facility
P.O. Box 999
Cañon City, CO 81215-0999

I hereby certify that I have mailed a copy of the **ORDER AND JUDGMENT** to the above-named individuals on 12/7/10

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk