

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-02675-BNB

DANIEL CHARLES ANDERSON,

Applicant,

v.

RAE TIMME, and
JOHN SUTHERS, The Attorney General of the State of [Colorado],

Respondents.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

DEC 13 2010

GREGORY C. LANGHAM
CLERK

ORDER OF DISMISSAL

Applicant, Daniel Charles Anderson, is in the custody of the Colorado Department of Corrections and currently is incarcerated at the Fremont Correctional Facility in Canon City, Colorado. Mr. Anderson initiated this action by filing a *pro se* Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 and a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 on October 25, 2010.

On November 3, 2010, the Court entered an order directing the Clerk of the Court to commence a civil action and denying Mr. Anderson leave to proceed pursuant to 28 U.S.C. § 1915. The Court found that Mr. Anderson did not qualify for leave to proceed pursuant to § 1915 because the certified copy of his inmate account statement demonstrated that he had an available balance of \$241.11 in his inmate account as of October 14, 2010. Therefore, the Court found that Mr. Anderson had sufficient funds to pay the \$5.00 filing fee. Mr. Anderson was directed to pay the \$5.00 filing fee required

pursuant to 28 U.S.C. § 1914 within thirty days. He was warned that the action would be dismissed without further notice if he failed to pay the \$5.00 filing fee.

Mr. Anderson has not communicated with the Court since October 25, 2010, and he has now failed to pay the \$5.00 filing fee within the time provided. Therefore, the action will be dismissed without prejudice. Accordingly, it is

ORDERED that the Application is denied and the action is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(b) for Applicant's failure to pay the \$5.00 filing fee. 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 13th 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

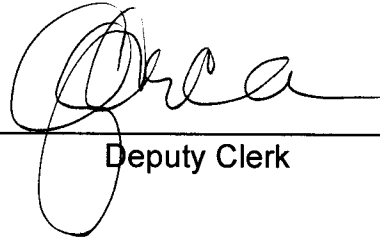
Civil Action No. 10-cv-02675-BNB

Daniel Charles Anderson
Prisoner No. 111055
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 December 13, 2010.

GREGORY C. LANGHAM, CLERK

By: _____

A handwritten signature in black ink, appearing to read 'G. Langham', written over a horizontal line.

Deputy Clerk