

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

JAN 18 2011

GREGORY C. LANGHAM
CLERK

Civil Action No. 10-cv-02678-BNB

PHILIP D. EFFLAND,

Applicant,

v.

PEOPLE OF THE STATE OF COLORADO, d/b/a PEOPLE OF THE STATE OF
COLORADO,
COLORADO DEPARTMENT OF CORRECTIONS,
ARISTEDES ZAVARAS, Executive Director,
CORRECTIONS CORPORATION OF AMERICA, d/b/a KIT CARSON
CORRECTIONAL CENTER, and
AVRIL CHAPMAN, Warden, Trustee-in-Fiction,

Respondents.

ORDER OF DISMISSAL

At the time of filing, Applicant, Philip D. Effland, was a prisoner in the custody of the Colorado Department of Corrections who was incarcerated at the Kit Carson Correctional Center. He initiated this action on October 28, 2010, by filing a "Motion for Removal from State to Federal Jurisdiction," a document titled "Natural Right to Proceed Without Costs or Fees Writ of Mandate," and two documents titled "Subpoena Duces Tecum."

In an order filed on November 3, 2010, Magistrate Judge Boyd N. Boland ordered Mr. Effland to cure certain deficiencies within thirty days. Specifically, Mr. Effland was directed to submit an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 on the court-approved form. Mr. Effland was also directed to file a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 on the court-

approved form and a current certified copy of his prisoner's trust fund statement. He was informed that the § 1915 motion and affidavit was only necessary if the \$5.00 filing fee was not paid in advance. The November 3 order warned Mr. Effland that if he failed to cure the designated deficiencies within the time allowed, the action would be dismissed without further notice.

On November 12, 2010, Mr. Effland filed a "Motion to Object" in which he objected to Magistrate Judge Boland's November 3 Order to Cure. On November 16, 2010, Mr. Effland filed a "Motion for Special Non Statutory Prohibitory Injunction Writ of Mandate to Cease and Desist." On November 23, 2010, Mr. Effland filed a "Petition for Change of Venue." The Court construed the November 12, 2010, Motion to Object as an objection filed pursuant to 28 U.S.C. § 636(b)(1)(A), and on December 2, 2010, the Court entered an order overruling Mr. Effland's objection. The December 2 Order also provided Mr. Effland additional time to cure the deficiencies in his action. Mr. Effland was again warned that the failure to cure the deficiencies would result in the dismissal of this action without further notice.

Mr. Effland has not communicated with the Court since November 23, 2010. Further, on December 27, 2010, the Court's December 2 Order was returned as undeliverable. The envelope appears to indicate that Mr. Effland has been released or transferred from the Kit Carson Correctional Center. Mr. Effland has failed to notify the Court of his change of address in a timely manner as required by the Local Rules of Practice of this Court. **See** D.C.COLO.LCivR 10.1M. (notice of new address to be filed

within five days after any change of address). Mr. Effland has also failed within the time allowed to cure the designated deficiencies. Accordingly, it is


ORDERED that the action is dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for the failure of Applicant, Philip D. Effland, to comply with the order to cure dated November 3, 2010. 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. It is

FURTHER ORDERED that all pending motions are denied as moot.

DATED at Denver, Colorado, this 18th day of January, 2011.

BY THE COURT:



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-02678-BNB

Philip D. Effland
Prisoner No. 132470
Kit Carson Corr. Center
PO Box 2000
Burlington, CO 80807

I hereby certify that I have mailed a copy of the **ORDER and JUDGMENT** to the above-named individuals on January 18, 2011

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk