

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-cv-02009-LTB

OLOYEA D. WALLING,

Applicant,

v.

VINCE EVERETT, Warden, KCCC, and
COLORADO ATTORNEY GENERAL OFFICE,

Respondents.

ORDER GRANTING MOTION FOR RECONSIDERATION

This matter arises on the “Motoin [sic] for Postjudgment Fed. R. Civ. P. 60” filed by Applicant, a *pro se* prisoner litigant, on January 6, 2012. Applicant currently is detained at the El Paso County Criminal Justice Center in Colorado Springs, Colorado. Applicant seeks reconsideration of the Order of Dismissal and the Judgment entered on October 24, 2011. The Court must construe the Motion liberally because Applicant is proceeding *pro se*. See *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). For the reasons stated below, the Court will grant the Motion.

The Court dismissed this action without prejudice because Applicant failed to comply with Magistrate Judge Boyd N. Boland’s Order of August 9, 2011, directing him to submit his claims on a Court-approved form used in filing habeas actions. On November 8, 2011, Applicant filed a Motion for Reconsideration pursuant to Fed. R. Civ.

P. 59(e) asking that the dismissal be vacated. Applicant asserted that he had filed his claims on a Court-approved form within the time allowed. The Court denied the Rule 59(e) Motion because Applicant failed to meet his burden of proof that he made timely use of the prison's legal mail system in submitting his Application to the Court.

Applicant now has submitted documentation that indicates legal correspondence to this Court was given to prison staff for mailing on September 23, 2011. Although the Court has reviewed all cases that Applicant has filed in this Court and in the Tenth Circuit and finds nothing was submitted in this case or inadvertently in any of Applicant's other cases, based on the documentation Applicant has submitted, the Court finds sufficient reason for vacating the dismissal. Accordingly, it is

ORDERED that Applicant's Motion (Doc. No. 13) is granted. It is

FURTHER ORDERED that the Order of Dismissal and the Judgment, entered on October 24, 2011, are vacated. It is

FURTHER ORDERED that the Clerk of the Court is directed to reinstate and return this action to the Pro Se Docket. It is

FURTHER ORDERED that Clerk of the Court shall enter Pages 4-25 of Document No. 11, which is the Court-approved Application form that Applicant attached to his first Motion for Reconsideration, as a separate docket entry and note the Application as filed on November 18, 2011. 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 (Doc. No. 2) is granted. It is

FURTHER ORDERED that process shall not issue until further order of the Court.

DATED at Denver, Colorado, this 10th day of January, 2012.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, Senior Judge
United States District Court