

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-cv-03079-BNB

RICHARD D. COMPTON,

Applicant,

v.

TOM CLEMENTS, Executive Director of the Colo Dept of Corrections, and  
THE ATTORNEY GENERAL OF THE STATE OF COLORADO, JOHN SUTHERS,

Respondents.

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ORDER OF DISMISSAL

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Applicant, Richard D. Compton, is a prisoner in the custody of the Colorado Department of Corrections (DOC) who currently is incarcerated at the Colorado Correctional Center in Golden, Colorado. Mr. Compton initiated this action by filing a *pro se* Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 and a motion for leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 together with a certified copy of his trust fund account statement. On December 9, 2011, the Court entered an order denying Mr. Compton leave to proceed *in forma pauperis* and directing him to pay the \$5.00 filing fee. Mr. Compton paid the \$5.00 filing fee on December 15, 2011.

On December 19, 2011, Magistrate Judge Boyd N. Boland determined that Mr. Compton's Application was deficient because Mr. Compton failed to include a statement of the claims that he intended to raise in this Court. Therefore, Magistrate Judge Boland directed him to file a Amended Application for Writ of Habeas Corpus Pursuant

to 28 U.S.C. § 2254. Mr. Compton was warned that the action would be dismissed without further notice if he failed to file an amended pleading within thirty days.

On December 23, 2011, Mr. Compton filed a letter with the Court in which he stated that Magistrate Judge Boland's "frivolous request" for an Amended Application had "depleted [him] financially." However, Mr. Compton did not request any relief from the Court, nor did he indicate that he needed additional time to file an amended pleading.

Mr. Compton has failed to file an Amended Application for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254, as directed by Magistrate Judge Boland. Further, he has not communicated with the Court since December 23, 2011. As a result, he has failed to file an amended pleading within the time allowed. Therefore, the Application and the action will be dismissed without prejudice.

Finally, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith and therefore *in forma pauperis* status will be denied for the purpose of appeal. *See Coppedge v. United States*, 369 U.S. 438 (1962). If Applicant files a notice of appeal he must also pay the full \$455 appellate filing fee or file a motion to proceed *in forma pauperis* in the United States Court of Appeals for the Tenth Circuit within thirty days in accordance with Fed. R. App. P. 24. 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, Richard D. Compton, to file an amended pleading. It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied. 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 25<sup>th</sup> day of January, 2012.

BY THE COURT:

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