

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-00130-BNB

LEO SIMMONS,

Applicant,

v.

JOHN CHAPDELAINE, Acting Warden,
KEVIN MILYARD, Warden,
THE PEOPLE OF THE STATE OF COLORADO, and
JOHN SUTHERS, The Attorney General of the State of Colorado,

Respondents.

ORDER DIRECTING APPLICANT TO FILE AMENDED APPLICATION

Applicant, Leo Simmons, is a prisoner in the custody of the Colorado Department of Corrections and is incarcerated at the correctional facility in Sterling, Colorado. Mr. Simmons, acting *pro se*, filed an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254. The Court must construe the Application liberally because Mr. Simmons is a *pro se* litigant. See *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). The Court, however, should not act as a *pro se* litigant's advocate. See *Hall*, 935 F.2d at 1110. For the reasons stated below, Mr. Simmons will be ordered to file an Amended Application.

Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts requires that Mr. Simmons go beyond notice pleading. See *Blackledge v. Allison*, 431 U.S. 63, 75 n.7 (1977). Naked allegations of constitutional violations devoid of factual support are not cognizable in a federal habeas action. See *Ruark v. Gunter*,

958 F.2d 318, 319 (10th Cir. 1992) (per curiam). Mr. Simmons must allege both the claims he seeks to raise and the **specific facts** to support each asserted claim. The Court has reviewed the Application submitted to the Court on January 18, 2012, and finds that it is deficient. Mr. Simmons asserts three claims. He fails, however, to state specific facts in support of each claim.

Pursuant to 28 U.S.C. § 2243, an application for writ of habeas corpus is directed to the person who has custody of the detained person. Therefore, People of the State of Colorado is not a properly named respondent. Furthermore, only one person needs to be named as his custodian. Accordingly, it is

ORDERED that Mr. Simmons file within thirty days from the date of this Order an Amended Application that complies with the Order. It is

FURTHER ORDERED that Mr. Simmons shall obtain the court-approved 28 U.S.C. § 2254 Application form (with the assistance of his case manager or the facility's legal assistant), along with the applicable instructions, at www.cod.uscourts.gov. It is

FURTHER ORDERED that if Mr. Simmons fails within the time allowed to file an Amended Application, as directed above, the action will be dismissed without further notice.

DATED February 2, 2012, at Denver, Colorado.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge