

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-00873-BNB

WALTER LEE GILBERT,

Applicant,

v.

UNITED STATES OF AMERICA,

Respondent.

ORDER OF DISMISSAL

Applicant, Walter Lee Gilbert, is a prisoner in the custody of the United States Bureau of Prisons who currently is incarcerated at the United States Penitentiary, Administrative Maximum, in Florence, Colorado. He initiated this action by filing *pro se* an Application for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241.

On April 5, 2012, Magistrate Judge Boyd N. Boland ordered Mr. Gilbert to cure certain deficiencies if he wished to pursue his claims. Specifically, Magistrate Judge Boland ordered Mr. Gilbert to name the proper Respondent on his application for a writ of habeas corpus pursuant to § 2241. Magistrate Judge Boland also ordered Mr. Gilbert either to pay the \$5.00 filing fee or to file a properly supported motion seeking leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. Rule 3(a)(2) of the Rules Governing Section 2254 Cases in the United States District Courts requires such a motion. The April 5 order directed Mr. Gilbert to obtain the Court-approved form for filing a § 1915 motion and affidavit, along with the applicable instructions, at

www.cod.uscourts.gov. Lastly, Mr. Gilbert was warned that the action would be dismissed without further notice if he failed to cure the deficiencies within thirty days.

On April 16, 2012, the copy of the April 5 order mailed to Mr. Gilbert was returned to the Court as undeliverable because Mr. Gilbert refused the mailing. Mr. Gilbert has failed to cure the designated deficiencies within the time allowed, or otherwise to communicate with the Court in any way. Therefore, the application will be denied and the action dismissed without prejudice for failure to cure the deficiencies designated in the April 5 order to cure, and for Mr. Gilbert's failure to prosecute.

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 Mr. Gilbert files a notice of appeal he must also pay the full \$455.00 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 habeas corpus application is denied and the action dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b) for the failure of Applicant, Walter Lee Gilbert, to cure the deficiencies designated in the April 5, 2012, order to cure, and for his failure to prosecute. 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 leave to proceed *in forma pauperis* on appeal is denied.

DATED at Denver, Colorado, this 15th day of May, 2012.

BY THE COURT:

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