

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-01779-BNB

MATTHEW S. HUBER,

Applicant,

v.

TOM CLEMENTS, Executive Director of DOC, and
THE STATE OF COLORADO,

Respondents.

ORDER OF DISMISSAL

Applicant, Matthew S. Huber, initiated this action by filing *pro se* an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 on July 9, 2012.

In an order filed on July 10, 2012, Magistrate Judge Boyd N. Boland ordered Mr. Huber to cure certain enumerated deficiencies in this case within thirty days. Specifically, Mr. Huber was directed to submit an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 on the court-approved form. Mr. Huber 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 July 10 order warned Mr. Huber that if he failed to cure the designated deficiencies within the time allowed, the action would be dismissed without further notice.

Mr. Huber has not communicated with the Court since July 9, 2012. He has therefore failed to file an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 and a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 on the court-approved forms, as directed by the July 10 Order. Accordingly, Mr. Huber has failed within the time allowed to cure the designated deficiencies and the action will be dismissed.

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, Matthew S. Huber, to comply with the order to cure dated July 9, 2012. It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied with leave to re-file in the Tenth Circuit.

FURTHER ORDERED that all pending motions are denied as moot.

DATED at Denver, Colorado, this 20th day of August, 2012.

BY THE COURT:

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