

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-02451-BNB

LENELLE GRAY,

Petitioner,

v.

WARDEN DANIELS,

Respondent.

ORDER OF DISMISSAL

Petitioner, Lenelle Gray, initiated this action by filing *pro se* a document titled “28 USC 2241 Habeas Corpus Petition Actual Innocence” (ECF No. 1). On September 17, 2012, Magistrate Judge Boyd N. Boland entered an order directing Mr. Gray to cure certain deficiencies if he wished to pursue his claims. Specifically, Magistrate Judge Boland ordered Mr. Gray to file an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 on the proper form and either to pay the \$5.00 filing fee or to file a Prisoner’s Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action along with a certificate showing the current balance in his inmate account in support of the 28 U.S.C. § 1915 motion. Mr. Gray was warned that the action would be dismissed without further notice if he failed to cure the deficiencies within thirty days.

On September 27, 2012, Mr. Gray filed a letter (ECF No. 4) seeking reconsideration of the requirement that he use the court-approved form or, in the

alternative, asking that his original pleading be returned to him and that he be provided with the court-approved pleading form. On October 1, 2012, Magistrate Judge Boland entered an order denying Mr. Gray's request to reconsider and directing the clerk of the Court to mail to Mr. Gray his original pleading filed in this action along with blank copies of the necessary forms to cure the deficiencies in this action.

Mr. Gray has failed to cure the deficiencies within the time allowed. Therefore, the action will be dismissed without prejudice for failure to cure the deficiencies.

Furthermore, 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 Petitioner files a notice of appeal he also must 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 because Mr. Gray failed to cure the deficiencies as directed. It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied without prejudice to the filing of a motion seeking leave to proceed *in forma pauperis* on appeal in the United States Court of Appeals for the Tenth Circuit.

DATED at Denver, Colorado, this 7th day of November, 2012.

BY THE COURT:

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