

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 12-cv-02669-BNB

(The above civil action number must appear on all future papers sent to the court in this action. Failure to include this number may result in a delay in the consideration of your claims.)

BEDAH DONALD FREY,

Applicant,

v.

JOHN SUTHERS, Executive Director, Colorado Dept. of Corrections, and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

ORDER DIRECTING APPLICANT TO CURE DEFICIENCIES

Applicant, Bedah Donald Frey, has submitted an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254. The court has reviewed the § 2254 application and it appears that Mr. Frey is challenging the execution of his sentence by the Colorado Department of Corrections. “Petitions under § 2241 are used to attack the execution of a sentence, see *Bradshaw v. Story*, 86 F.3d 164, 166 (10th Cir.1996), in contrast to § 2254 habeas and [28 U.S.C.] § 2255 proceedings, which are used to collaterally attack the validity of a conviction and sentence.” See *McIntosh v. United States Parole Comm’n*, 115 F.3d 809, 811 (10th Cir. 1997). Accordingly, to the extent Mr. Frey is challenging the execution of his state court sentence, his remedy is an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241.

As part of the court’s review pursuant to D.C.COLO.LCivR 8.2, the court has

determined that the submitted documents are deficient as described in this order.

Applicant will be directed to cure the following if he wishes to pursue his claims. Any papers that the Applicant files in response to this order must include the civil action number on this order.

28 U.S.C. § 1915 Motion and Affidavit:

- (1) is not submitted
- (2) is missing affidavit
- (3) is missing certified copy of prisoner's trust fund statement for the 6-month period immediately preceding this filing
- (4) is missing certificate showing current balance in prison account (account statement must be certified)
- (5) is missing required financial information
- (6) is missing an original signature by the prisoner
- (7) is not on proper form (must use the court's current form)
- (8) names in caption do not match names in caption of complaint, petition or habeas application
- (9) other: Motion is necessary only if \$5.00 filing fee is not paid in advance.

Complaint, Petition or Application:

- (10) is not submitted
- (11) is not on proper form (must use the court's current form)
- (12) is missing an original signature by the prisoner
- (13) is missing page nos.
- (14) uses et al. instead of listing all parties in caption
- (15) names in caption do not match names in text
- (16) addresses must be provided for all defendants/respondents in "Section A. Parties" of complaint, petition or habeas application
- (17) other: Application is submitted on the wrong form and the only proper Respondent in a habeas corpus action is Applicant's current warden, superintendent, jailer or other custodian.

Accordingly, it is

ORDERED that the Applicant cure the deficiencies designated above **within thirty (30) days from the date of this order.** Any papers which the Applicant files in response to this order must include the civil action number on this order. It is

FURTHER ORDERED that the Applicant shall obtain the court-approved

Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action and Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 forms (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 the Applicant fails to cure the designated deficiencies **within thirty (30) days from the date of this order**, the action will be dismissed without further notice. The dismissal shall be without prejudice.

DATED October 23, 2012, at Denver, Colorado.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge