

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-02891-BNB

ANDRE LEFFEBRE,

Petitioner,

v.

DAVID BERKEBILE, Warden,
FEDERAL BUREAU OF PRISONS, and
U.S. DEPARTMENT OF JUSTICE,

Respondents.

ORDER OF DISMISSAL

Petitioner, Andre Leffebvre, initiated this action by filing *pro se* a Petition for Habeas Corpus (ECF No. 1). On November 2, 2012, Magistrate Judge Boyd N. Boland entered an order directing Mr. Leffebvre to cure certain deficiencies if he wished to pursue his claims in this action. More specifically, Magistrate Judge Boland ordered Mr. Leffebvre to file an amended pleading on the proper form and 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. Mr. Leffebvre was warned that the action would be dismissed without further notice if he failed to cure the deficiencies within thirty days.

On November 21, 2012, Mr. Leffebvre filed two documents that were docketed as a motion to dismiss (ECF No. 4) and a letter to the Court (ECF No. 5). In the motion to dismiss, Mr. Leffebvre asks the Court to send the case back to him, to dismiss the case, to send him the proper form for filing a habeas corpus application, and to hold until a

future date the funds he was sending to the Court. A handwritten notation on the motion to dismiss, apparently made by someone in the office of the Clerk of the Court, indicates that the proper forms for filing an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 were mailed to Mr. Leffebre. (See ECF No. 4.) In the letter to the Court, Mr. Leffebre requests that a copy of the application filed in this action be mailed to him along with the proper form and he indicates that he is making arrangements to pay the \$5.00 filing fee.

Mr. Leffebre has not filed an application for a writ of habeas corpus on the proper form and he has failed either to pay the filing fee or to file a properly supported motion seeking leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. Therefore, the action will be dismissed 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 Petition for Habeas Corpus is denied and the action is dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure because Mr. Leffebre failed to cure the deficiencies as directed. It is

FURTHER ORDERED that the motion to dismiss (ECF No. 4) is denied as moot.
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 10th day of December, 2012.

BY THE COURT:

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