

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-00244-BNB

THERON JOHNNY MAXTON,

Petitioner,

v.

T. H. TOZZA RHODES, Warden, FCI-Florence, and
CHARLES SAMUELS, BOP Director, Washington D.C.,

Respondents.

ORDER OF DISMISSAL

Petitioner, Theron Johnny Maxton, is an inmate at the Federal Correctional Institution in Florence, Colorado. Mr. Maxton initiated this action by filing *pro se* in the United States District Court for the District of South Carolina a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 and a motion seeking leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. Mr. Maxton was granted leave to proceed *in forma pauperis*. In an order entered on January 30, 2013, the District of South Carolina transferred the action to this court.

On January 31, 2013, Magistrate Judge Boyd N. Boland entered an order directing Mr. Maxton to cure a deficiency if he wishes to pursue his claims in this court. More specifically, Magistrate Judge Boland ordered Mr. Maxton to file an amended pleading using the proper form approved for use by prisoners in the District of Colorado. Mr. Maxton was warned that the action would be dismissed without further notice if he failed to cure the deficiency within thirty days.

Mr. Maxton has failed to cure the deficiency within the time allowed and he has failed to respond in any way to Magistrate Judge Boland's January 31 order. Therefore, the action will be dismissed without prejudice for failure to cure the deficiency.

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 habeas corpus petition is denied and the action is dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure because Mr. Maxton failed to cure the deficiency 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 8th day of March, 2013.

BY THE COURT:

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