

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-00587-BNB

ROY E. HERNANDEZ,

Applicant,

v.

COLORADO DPT. OF CORRECTIONS EXECUTIVE DIRECTOR,
RON MURRAY (Director), CMRC, and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

ORDER OF DISMISSAL

Applicant, Roy E. Hernandez, is a prisoner in the custody of the Colorado Department of Corrections who was incarcerated at the Cheyenne Mountain Re-Entry Center in Colorado Springs when he initiated this action by filing *pro se* an Application for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (ECF No. 1). He has filed a second amended Application for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 (ECF No. 12) and has paid the \$5.00 filing fee for a habeas corpus action.

On May 13, 2013, Magistrate Judge Boyd N. Boland ordered Mr. Hernandez to file on the proper, Court-approved form a third and final amended § 2254 application that only challenged the validity of his conviction and sentence or a third and final amended § 2241 that only asserted claims attacking the execution of his sentence. The May 13 order also directed Mr. Hernandez to name the appropriate Respondent, i.e., the warden of the Cheyenne Mountain Re-Entry Center. Lastly, the May 13 order

informed Mr. Hernandez that his third and final amended application must comply with the Local Rules of Practice for this Court concerning legibility of filings. Magistrate Judge Boland warned Mr. Hernandez that if he failed to comply with the directives of the May 13 order within the time allowed, the second amended application would be denied and the action dismissed without further notice.

On June 17, 2013, Mr. Hernandez filed a motion for an extension of time (ECF No. 14) indicating his new address in Del Rio, Texas. On June 18, 2013, Magistrate Judge Boland entered a minute order (ECF No. 15) granting the motion for an extension of time. On June 27, 2013, the copy of the June 18 minute order was returned to the Court as undeliverable (ECF No. 16) because it inadvertently was mailed to the Cheyenne Mountain Re-Entry Center address. On July 1, 2013, the minute order was remailed to Mr. Hernandez at his address in Del Rio, Texas, and on July 5, 2013, that copy was returned to the Court as undeliverable (ECF No. 18) as well.

On July 15, 2013, Magistrate Judge Boland entered a minute order (ECF No. 19) directing the clerk of the Court to re-mail a copy of the June 18 minute order to Mr. Hernandez at the forwarding address listed on the envelope (ECF No. 18) for the June 18 minute order returned to the Court as undeliverable on July 5, 2013. The July 15 minute order allowed Mr. Hernandez an additional twenty days in which to submit a third and final amended application that complied with the May 13 order.

Mr. Hernandez has failed within the time allowed to file a third and final amended application as directed in the May 13 order or otherwise to communicate with the Court in any way. Therefore, the amended application (ECF No. 10) will be denied and the action dismissed for Mr. Hernandez's failure to file a third and final amended application

as directed within the time allowed, and for his failure to prosecute.

Finally, the Court certifies pursuant to § 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 Mr. Hernandez files a notice of appeal he also must pay the full \$455.00 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 second amended Application for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (ECF No. 12) is denied and the action dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for the failure of Applicant, Roy E. Harnandez, within the time allowed to file a third and final amended application as directed in the order of May 13, 2013 (ECF No. 13), and for his failure to prosecute. It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied. It is

FURTHER ORDERED that any pending motions are denied as moot.

DATED at Denver, Colorado, this 15th day of August, 2013.

BY THE COURT:

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