

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-00777-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.)

JAMES K. WOROSELLO,

Plaintiff,

v.

[NO DEFENDANTS NAMED],

Defendants.

ORDER DIRECTING PLAINTIFF TO CURE DEFICIENCIES

Plaintiff has submitted two documents titled "Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915" (ECF No.s 3 and 4), along with another document that appears to be part of a Complaint. The submitted documents are deficient, for the reasons discussed below. Moreover, the Court has reviewed Mr. Worosello's filings and cannot determine whether he is asserting civil rights claims or habeas corpus claims.

Mr. Worosello challenges the basis for his state court criminal convictions, but he seeks only monetary relief and not release from custody. "The essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody." **See *Preiser v. Rodriguez***, 411 U.S. 475, 484 (1973). By contrast, a civil rights claim pursuant to 28 U.S.C. § 1343 and 42 U.S.C. § 1983 challenges the conditions of a prisoner's

confinement and seeks monetary and injunctive relief. ***See McIntosh v. United States Parole Comm'n***, 115 F.3d 809, 812 (10th Cir. 1997). Mr. Worosello will be directed to file either an Application for Habeas Corpus Relief Pursuant to 28 U.S.C. § 2254 or a Prisoner Complaint on the court-approved form. Additionally, Mr. Worosello will be directed to file a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action or Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 on the court-approved form. Alternatively, if Mr. Worosello files a habeas action, he may instead pay the \$5.00 filing fee, or, if he files a Prisoner Complaint (civil rights action), he may choose to pay the \$350.00 filing fee. Accordingly, it is

ORDERED that Mr. Worosello cure the deficiencies designated above by doing one of the following: (1) filing an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 and either paying the \$5.00 filing fee, or filing a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action within thirty (30) days from the date of this order; or, (2) filing a Prisoner Complaint and either paying the \$350.00 filing fee, or filing a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 within thirty (30) days from the date of this order. It is

FURTHER ORDERED that Mr. Worosello shall obtain the court-approved Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254, Prisoner Complaint, Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action, and Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 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 within the time allowed Mr. Worosello fails to cure the designated deficiencies the action will be dismissed without prejudice and without further notice. The dismissal shall be without prejudice.

DATED March 26, 2013, at Denver, Colorado.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge