

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-02211-LTB

JESSIE AILSWORTH, JR.,

Applicant,

v.

D. BERKEBILE, F.P.C. Florence,

Defendant.

ORDER VACATING ORDER OF DISMISSAL

This matter is before the Court on the motion for issuance of a writ of habeas corpus (ECF No. 9) that Applicant, Jessie Ailsworth, Jr., filed *pro se* on October 18, 2013, in which he alleges he paid the \$5.00 filing fee in this matter.

The instant action was dismissed without prejudice on October 16, 2013 (ECF No. 7), for failure to pay the \$5.00 filing fee or submit on the proper, Court-approved form a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action. It has come to the Court's attention that the \$5.00 filing fee was paid on September 3, 2013, but not docketed until October 21, 2013. See ECF No. 10.

Therefore, the dismissal order (ECF No. 7) and judgment (ECF No. 8) will be vacated. The clerk of the Court will be directed to return this action to the *pro se* docket. The motion for issuance of a writ of habeas corpus filed on October 18 will be denied as premature.

Accordingly, it is

ORDERED that the Order of Dismissal (ECF No. 7) and Judgment (ECF No. 8) entered in this action on October 16, 2013, are vacated. It is

FURTHER ORDERED that the clerk of the Court is directed to return this action to the *pro se* docket. It is

FURTHER ORDERED that the motion for issuance of a writ of habeas corpus filed on October 18 (ECF No. 9) is denied as premature.

DATED at Denver, Colorado, this 23rd day of October, 2013.

BY THE COURT:

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