

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-02588-BNB

KEVIN DAWKINS,

Petitioner,

v.

PEOPLE OF THE STATE OF COLORADO ARAPAHOE COUNTY,

Respondent.

ORDER OF DISMISSAL

Petitioner, Kevin Dawkins, was an inmate at the Logan County Detention Center in Sterling, Colorado, when he initiated this action by filing *pro se* a “Writ of H[abeas] Corpus” (ECF No. 1) and a “Motion for Leave to Proceed In Forma Paup[er]is” (ECF No. 3). On September 23, 2013, Magistrate Judge Boyd N. Boland entered an order directing Mr. Dawkins to cure certain deficiencies if he wished to pursue his claims in this action. Specifically, Magistrate Judge Boland directed Mr. Dawkins to file on the court-approved forms a Prisoner’s Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action and an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241. Magistrate Judge Boland also directed Mr. Dawkins to submit a certificate showing the current balance in his inmate account in support of the 28 U.S.C. § 1915 motion. Mr. Dawkins was warned that the action would be dismissed without further notice if he failed to cure the deficiencies within thirty days.

On September 24, 2013, Mr. Dawkins filed a notice of change of address (ECF

No. 5) stating that he had been transferred to the Arapahoe County Detention Facility in Centennial, Colorado. On October 1, 2013, the copy of Magistrate Judge Boland's September 23 order that was mailed to Mr. Dawkins at the Logan County Detention Center was returned to the Court undelivered. On October 15, 2013, Mr. Dawkins filed another "Writ of H[abeas] Corpus" (ECF No. 8), a certified copy of his inmate trust fund account statement (ECF No. 9), and a letter to the Court (ECF No. 7) explaining that he was resubmitting the "Writ of H[abeas] Corpus" because he had not received any response from the Court. On October 16, 2013, Magistrate Judge Boland entered a minute order directing the clerk of the Court to mail to Mr. Dawkins at his new address a copy of the September 23 order to cure deficiencies. Magistrate Judge Boland advised Mr. Dawkins in the minute order that he would have thirty days from the date of the minute order to cure the deficiencies. Copies of the minute order and the order to cure deficiencies were mailed to Mr. Dawkins at the Arapahoe County Detention Facility on October 16, 2013. (See ECF No. 11.)

Although Mr. Dawkins submitted to the Court on October 15 a certified copy of his inmate trust fund account statement, he has failed within the time allowed to cure all of the deficiencies in this action because he has not filed on the proper forms a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action and an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241. Therefore, the action will be dismissed without prejudice for failure to cure all of 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 “Writ of H[abeas] Corpus” (ECF Nos. 1 & 8) is denied and the action is dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure because Mr. Dawkins failed to cure all of the deficiencies 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. It is

FURTHER ORDERED that the “Motion for Leave to Proceed In Forma Paup[e]ris” (ECF No. 3) is denied as moot.

DATED at Denver, Colorado, this 25th day of November, 2013.

BY THE COURT:

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