

FILED

United States Court of Appeals  
Tenth Circuit

UNITED STATES COURT OF APPEALS

July 22, 2014

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker  
Clerk of Court

In re:

CLIFFORD DENNIS NICHOLAS,

Petitioner.

No. 14-1227  
(D.C. No. 1:13-CV-03497-BNB)  
(D. Colo.)

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**ORDER**

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Before **KELLY, LUCERO, and McHUGH**, Circuit Judges.

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Clifford Dennis Nicholas, a Colorado state prisoner proceeding pro se, petitions for a writ of mandamus directing the district court to consider the merits of his complaint in district court case No. 13-CV-03497-BNB. We deny mandamus relief as moot.

After Mr. Nicholas filed his complaint in district court, the magistrate judge directed him to cure deficiencies in the complaint. Mr. Nicholas filed another complaint. On April 10, 2014, the magistrate judge ordered him to file an amended complaint within thirty days that complied with Federal Rule of Civil Procedure 8 and that alleged the personal participation of each named defendant. Although Mr. Nicholas asked for and received an extension of time to file an amended complaint, he did not do so. Instead, on June 9, he filed a petition for writ of mandamus with this court, asking that the district court be required to apply liberal

pleading standards and rule on his pending complaint.<sup>1</sup> On June 20, the district court dismissed the complaint without prejudice, deciding that Mr. Nicholas had failed to comply with Rule 8 and the magistrate judge's April 10 order.

At this point, the district court case is closed. Because it is closed, the request for mandamus relief is moot.

Accordingly, we deny the petition for a writ of mandamus as moot. Also, we deny Mr. Nicholas' requests for leave to proceed in forma pauperis and for appointment of counsel.

Entered for the Court



ELISABETH A. SHUMAKER, Clerk

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<sup>1</sup> Upon receipt of the petition for writ of mandamus, the Tenth Circuit clerk's office notified Mr. Nicholas that his petition would not be considered until he paid the docket fee or submitted an application to proceed without prepayment of fees or costs. On July 14, 2014, he filed the proper application, along with a document entitled "Mandamus/Apology/Address Merits of Complaint and Explanation." He filed the identical document again on July 21.