

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-00528-BNB

GEORGE FRANKLIN EUBANKS,

Applicant,

v.

[NO RESPONDENT NAMED],

Respondent.

ORDER OF DISMISSAL

Applicant, George Franklin Eubanks, is a prisoner in the custody of the Colorado Department of Corrections. Mr. Eubanks initiated this action by filing *pro se* a letter to the Court (ECF No. 1) demanding to be released from custody because he allegedly was convicted in violation of his constitutional rights. The instant action was commenced and, on February 26, 2014, Magistrate Judge Boyd N. Boland entered an order directing Mr. Eubanks to cure certain deficiencies if he wished to pursue any claims in this action. Specifically, Magistrate Judge Boland ordered Mr. Eubanks to file an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 and either to pay the \$5.00 filing fee or to file a properly supported Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action. Mr. Eubanks was warned that the action would be dismissed without further notice if he failed to cure the deficiencies within thirty days.

Mr. Eubanks has failed to cure the deficiencies within the time allowed and has failed to respond in any way to Magistrate Judge Boland's February 26 order.

Therefore, the action will be dismissed without prejudice for failure to cure 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 Applicant files a notice of appeal he also must pay the full \$505 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 action is dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure because Mr. Eubanks failed to cure the deficiencies as directed. It is

FURTHER ORDERED that no certificate of appealability will issue because Applicant has not made a substantial showing of the denial of a constitutional right. 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.

DATED at Denver, Colorado, this 9th day of April, 2014.

BY THE COURT:

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