

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-01100-BNB

ABRAHAM OLIVAS-SEPULBEDA,

Applicant,

v.

ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondent.

ORDER OF DISMISSAL

Applicant, Abraham Olivas-Sepulbeda, initiated this action by filing *pro se* an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (ECF No. 1). On June 20, 2014, Mr. Olivas-Sepulbeda filed an amended Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (ECF No. 8). On June 26, 2014, Magistrate Judge Boyd N. Boland entered an order directing Mr. Olivas-Sepulbeda to file a second amended application that clarifies the conviction he is challenging, the specific claims he is asserting, and the specific relief he is seeking. Mr. Olivas-Sepulbeda was warned that the action would be dismissed without further notice if he failed to file a second amended application within thirty days.

On July 7, 2014, the copy of Magistrate Judge Boland's June 26 order that was mailed to Mr. Olivas-Sepulbeda at the address he provided was returned to the Court undelivered. The returned envelope (ECF No. 12) bears a stamp or sticker that reads "RETURN TO SENDER, ATTEMPTED NOT KNOWN, UNABLE TO FORWARD." An

order granting Mr. Olivas-Sepulbeda leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 in this action also was returned to the Court undelivered on July 14, 2014. (See ECF No. 13.)

Pursuant to Rule 11.1(d) of the Local Rules of Practice of the United States District Court for the District of Colorado-Civil, an unrepresented party must file a notice of new address within five days of any change of address. Mr. Olivas-Sepulbeda has failed to comply with the Court's local rules and, as a result, he has failed within the time allowed to file a second amended application as directed. Therefore, the action will be dismissed.

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 habeas corpus application (ECF No. 1) and the amended application (ECF No. 8) are denied and the action is dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure because Mr. Olivas-Sepulbeda failed to prosecute and file a second amended application 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 1st day of August, 2014.

BY THE COURT:

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