

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-01120-BNB

NEHEMIAH GARCIA,

Applicant,

v.

GREG WILSON, Chief Denver Sheriff, and
WALT PESTERFIELD, Director of the Colorado Division of Parole,

Respondents.

ORDER OF DISMISSAL

Applicant, Nehemiah Garcia, currently is incarcerated at the Denver County Jail. Mr. Garcia submitted *pro se* on April 18, 2014, an Application for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 (ECF No. 1).

Magistrate Judge Boyd N. Boland reviewed the habeas corpus application and determined it was deficient. On April 23, 2014, Magistrate Judge Boland entered an order directing Mr. Garcia within thirty days to cure certain enumerated deficiencies in the action. Magistrate Judge Boland directed Mr. Garcia to obtain, with the assistance of his case manager or the facility's legal assistant, the Court-approved forms for filing 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 Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241. The April 23 order directed Mr. Garcia to complete and submit those forms. Specifically, Mr. Garcia was ordered to submit a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action together

with a certificate showing the current balance in his prison account. Alternatively, he was informed he could pay the \$5.00 filing fee for a habeas corpus action. He also was directed to submit a § 2241 application that named as Respondent his current warden, superintendent, jailer, or other custodian, and complied with the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure and Rule 2 of the Rules Governing Section 2254 Cases in the United States Courts.

On April 25, 2014, Mr. Garcia submitted on an improper form an unsigned Prisoner's Motion and Affidavit for Leave to Proceed on Appeal Pursuant to 28 U.S.C. § 1915 and Fed. R. App. P. 24 in a Habeas Corpus Action without a certificate of the warden as to the amount of money on deposit in his inmate trust fund account. He failed to submit an amended Application for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241.

Mr. Garcia has failed within the time allowed to cure all of the deficiencies in this case, file an amended application as directed, or otherwise communicate with the Court in any way. Therefore, the action will be dismissed without prejudice for Mr. Garcia's failure to cure the designated deficiencies and file an amended application as directed within the time allowed.

Finally, the Court certifies pursuant to § 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 Mr. Garcia files a notice of appeal he also must pay the full \$505.00 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 Application for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 (ECF No. 1) is denied and the action dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for the failure of Applicant, Nehemiah Garcia, to cure the deficiencies designated in the order to cure of April 23, 2014, within the time allowed and file an amended application 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 any pending motions are denied as moot.

DATED June 4, 2014, at Denver, Colorado.

BY THE COURT:

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