

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-01818-BNB

DARIN WHATLEY,

Petitioner,

v.

[NO RESPONDENT NAMED],

Respondent.

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**ORDER DIRECTING PETITIONER TO CURE DEFICIENCIES**

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Petitioner, Darin Whatley, initiated this action on June 26, 2014 by submitting a Letter to the Court concerning the filing of a writ of habeas corpus. Because Mr. Whatley appears to seek habeas corpus relief in this Court, the instant action has been commenced.

“The essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody.” See *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). “Petitions under § 2241 are used to attack the execution of a sentence, see *Bradshaw v. Story*, 86 F.3d 164, 166 (10th Cir.1996), while a petition under § 2254 challenges the validity of a state court conviction or sentence. See *McIntosh v. United States Parole Comm’n*, 115 F.3d 809, 811 (10th Cir. 1997).

After pursuant to D.C.COLO.LCivR 8.1(b), the Court has determined that the submitted document is deficient as described in this order. Mr. Whatley will be directed to cure the following if he wishes to pursue his claims. Any papers that the Mr. Whatley

files in response to this order must include the civil action number on this order.

**28 U.S.C. § 1915 Motion and Affidavit:**

- (1)  is not submitted
- (2)  is missing affidavit
- (3)  is missing certified copy of prisoner's trust fund statement for the 6-month period immediately preceding this filing
- (4)  is missing certificate showing current balance in prison account (necessary if filing a habeas corpus application)
- (5)  is missing required financial information
- (6)  is missing an original signature by the prisoner
  
- (7)  is not on proper form (must use the court's current form):
- (8)  names in caption do not match names in caption of complaint, petition or habeas application
- (9)  other: Mr. Whatley may pay the \$5.00 filing fee, instead of submitting a § 1915 Motion and Affidavit.

**Complaint, Petition or Application:**

- (10)  is not submitted
- (11)  is not on proper form (must use the court's current form)
- (12)  is missing an original signature by the prisoner
- (13)  is missing page nos. \_\_\_\_
- (14)  uses et al. instead of listing all parties in caption
- (15)  names in caption do not match names in text
- (16)  addresses must be provided for all defendants/respondents in "Section A. Parties" of complaint, petition or habeas application
- (17)  other:

Accordingly, it is

ORDERED that Mr. Whatley cure the deficiencies designated above **within thirty (30) days from the date of this order**. Any papers that Mr. Whatley files in response to this order must include the civil action number on this order. It is

FURTHER ORDERED that Mr. Whatley, with the assistance of his case manager or the facility's legal assistant, shall obtain the Court-approved form for filing an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 (execution of

sentence), or the form for filing an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (validity of sentence); and a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action, along with the applicable instructions, at [www.cod.uscourts.gov](http://www.cod.uscourts.gov). It is

FURTHER ORDERED that, if Mr. Whatley fails to cure the designated deficiencies **within thirty (30) days from the date of this order**, this action will be dismissed without further notice. The dismissal shall be without prejudice.

DATED: July 1, 2014, at Denver, Colorado.

BY THE COURT:

s/ Boyd N. Boland  
United States Magistrate Judge