

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-01828-BNB

KENNETH T. MUSCH,

Applicant,

v.

RICK RAEMISCH,

Respondent.

ORDER OF DISMISSAL

Applicant, Kenneth T. Musch, initiated this action on July 1, 2014, by filing an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 and a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action.

On July 2, 2014, Magistrate Judge Boyd N. Boland reviewed Mr. Musch's filings and determined that they were deficient. Magistrate Judge Boland directed Applicant to submit a certified statement showing the current balance in his inmate trust fund account. (ECF No. 4). Magistrate Judge Boland advised Plaintiff that he could pay the \$5.00 filing fee in lieu of submitting the certified statement. (*Id.*). Magistrate Judge Boland further instructed Mr. Musch to submit an Amended Application, on the court-approved form, that named the proper Respondent - i.e., the warden of the facility where he is incarcerated. (*Id.*). Magistrate Judge Boland advised Applicant that he could obtain the court-approved form for his Amended § 2241 Application from the Court's website at www.cod.uscourts.gov. (*Id.*). Finally, Magistrate Judge Boland

warned Mr. Musch in the July 2 Order that failure to cure the deficiencies noted would result in dismissal of this action without further notice. (*Id.*).

On July 21, 2014, Mr. Musch filed a “Motion to Amend” asking the Court to remove Rick Raemisch as the named Respondent and to substitute the Warden of the Crowley County Correctional Facility. (ECF No. 6).

On July 23, 2014, Magistrate Judge Boland issued a Minute Order granting Applicant an additional thirty (30) days to comply with the July 2 Order directing him to cure deficiencies. (ECF No. 7). The July 23 Minute Order warned Applicant that failure to comply would result in dismissal of this action without further notice. (*Id.*).

On August 7, 2014, Mr. Musch filed a Motion to Amend (ECF No. 8) to add the Warden of the Buena Vista Correctional Facility, where he was incarcerated at the time of filing, as the proper Respondent to this action. He also filed a “Motion Requesting Subpoena” (ECF No. 9), in which he asks the Court to issue a subpoena to Respondent to copy his Colorado Department of Corrections’ file. However, Mr. Musch has not paid the \$5.00 filing fee or filed a certified statement showing the balance in his inmate trust fund account as required by the July 2 Order. Accordingly, it is

ORDERED that this action is DISMISSED without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for the failure of Applicant, Kenneth T. Musch, to comply with the July 2, 2014 Order Directing Applicant to Cure Deficiencies. It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied for the purpose of appeal. 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. See

Coppedge v. United States, 369 U.S. 438 (1962). If Mr. Musch files a notice of appeal he must also 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. It is

FURTHER ORDERED that all pending motions are DENIED as moot.

DATED September 5, 2014, at Denver, Colorado.

BY THE COURT:

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