

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-01874-BNB

GAYLORD EUGENE GALLEGOS,

Applicant,

v.

MICHAEL E. MILLER, Warden, Crowley County Correctional Facility,

Respondent.

ORDER OF DISMISSAL

Applicant, Gaylord Eugene Gallegos, is a prisoner in the custody of the Colorado Department of Corrections at the Crowley County Correctional Facility in Olney Springs, Colorado. He submitted *pro se* an Application for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 (ECF No. 1). The Court reviewed the habeas corpus application and determined it was deficient. Therefore, on July 9, 2014, Magistrate Judge Boyd N. Boland entered an order (ECF No. 3) directing Mr. Gallegos to cure certain enumerated deficiencies in the case and file an amended application within thirty days if he wished to pursue his claims.

The July 9 order pointed out that Mr. Gallegos failed to submit either the \$5.00 filing fee or 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 of the warden showing the current balance in his prison account. The July 9 order also pointed out that the habeas corpus application failed to assert any claims. Therefore, the July 9

order directed Mr. Gallegos to file an amended habeas corpus application against the proper Respondent, i.e., his custodian, that 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 District Courts. Mr. Gallegos was directed 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, and to use those forms in curing the designated deficiencies and in filing the amended application. The July 9 order warned him that if he failed to cure the designated deficiencies and file an amended application as directed within thirty days, the application would be denied and the action dismissed without prejudice and without further notice.

Mr. Gallegos has failed to cure the designated deficiencies and file an amended habeas corpus application as directed within the time allowed, or otherwise communicate with the Court in any way. Therefore, the habeas corpus application will be denied and the action dismissed without prejudice for Mr. Gallegos' failure to cure the designated deficiencies and file an amended application as directed within the time allowed, and for his failure to prosecute.

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. Gallegos 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 Rules 8 and 41(b) of the Federal Rules of Civil Procedure and Rule 2 of the Rules Governing Section 2254 Cases in the United States District Courts for the failure of Applicant, Gaylord Eugene Gallegos, to cure the designated deficiencies and file an amended application as directed in the order of July 9, 2014, within the time allowed, and for his failure to prosecute. 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. It is

FURTHER ORDERED that any pending motions are denied as moot.

DATED at Denver, Colorado, this 25th day of August, 2014.

BY THE COURT:

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