

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-02234-BNB

LARRY DIXSON,

Petitioner,

v.

UNITED STATES of AMERICA,

Respondent.

ORDER OF DISMISSAL

Petitioner, Larry Dixon, is detained at the Colorado Mental Health Institute at Pueblo, Colorado (CMHIP). Mr. Dixon initiated this action by filing a document titled, "Writ of Attachment," in which he appears to challenge the legality of his pre-trial detention and complains about actions taken by his court-appointed public defender in his state criminal proceeding. Petitioner requests that the Court order his release from detention. Because Mr. Dixon challenges the legality of his pre-trial contention, the Court opened this action under 28 U.S.C. § 2241. See *Yellowbear v. Wyo. Att'y Gen.*, 525 F.3d 921, 924 (10th Cir. 2008); *Walck v. Edmondson*, 472 F.3d 1227, 1235 (10th Cir. 2007).

On August 12, 2104, Magistrate Judge Boyd N. Boland reviewed Mr. Dixon's filing and determined that it was deficient. Magistrate Judge Boland directed Petitioner to file an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241, that named a proper respondent, and a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action, on the court-approved forms,

within thirty days. (ECF No. 3). Magistrate Judge Boland advised Mr. Dixon that he could pay the \$5.00 filing fee in lieu of submitting a § 1915 motion and affidavit. (*Id.*). Plaintiff was warned in the August 12 Order that failure to cure the deficiencies would result in dismissal of this action without further notice. (*Id.*).

On August 25, 2014, the Petitioner filed a “Motion to Proceed In Leave In Forma Pauperis” (ECF No. 5). The Motion was not submitted on the court- approved form. On September 2, 2014, Magistrate Judge Boland entered a minute order directing the Clerk of the Court is directed to send to Petitioner copies of the court-approved forms. (ECF No. 6). Magistrate Judge Boland ordered Mr. Dixon to comply with the August 12 Order within thirty (30) days. (*Id.*). The copy of the September 2 Order was returned to the Court as undeliverable. (ECF No. 8).

On September 24, 2014, Mr. Dixon filed a Letter (ECF No. 9) notifying the Court of his change of address from the Mesa County Detention Facility to the CMHIP. In a September 25, 2014 minute order, Magistrate Judge Boland directed the clerk of the court to send to Petitioner, at his new address, copies of the court-approved forms for filing a Prisoner’s Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 and an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241. (ECF No. 10). Magistrate Judge Boland instructed Petitioner to use the forms to comply with the August 12, 2014 Order Directing Petitioner to Cure Deficiencies, within thirty days. (*Id.*). Magistrate Judge Boland further warned Mr. Dixon that failure to comply with the September 25 minute order and the August 12 Order may result in dismissal of this action without further notice. (*Id.*). Copies of the court-approved forms were mailed to Petition on September 25, 2014 (see ECF No. 11), and have not been returned by

the U.S. Postal Service as undeliverable.

Mr. Dixon has now failed to comply with the August 12 Order and the September 25 minute order. Moreover, he has not communicated with the Court since September 24, 2014. 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 Petitioner, Larry K. Dixon, to comply with the August 12, 2014 Order Directing Petitioner to Cure Deficiencies and the September 25, 2014 minute order. It is

FURTHER ORDERED that no certificate of appealability will issue because jurists of reason would not debate the correctness of this procedural ruling and Mr. Dixon 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 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. Dixon 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 November 4, 2014, at Denver, Colorado.

BY THE COURT:

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