

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-02240-BNB

TONY MASCARENAS,

Applicant,

v.

[NO NAMED RESPONDENT],

Respondent.

ORDER OF DISMISSAL

Applicant, Tony Mascarenas, was incarcerated at the Weld County Jail in Greeley, Colorado, when he submitted *pro se* a document titled "Writ of Habeas Corpus" (ECF No.1). The Court reviewed the document and determined it was deficient. Therefore, on August 13, 2014, Magistrate Judge Boyd N. Boland entered an order (ECF No. 3) directing Mr. Mascarenas to cure certain enumerated deficiencies in the case within thirty days if he wished to pursue his claims.

The August 13 order pointed out that Mr. Mascarenas 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 showing the current balance in his inmate account. The August 13 order also pointed out that Mr. Mascarenas failed to submit on the proper, Court-approved form an Application for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 that named the proper party as Respondent. The August 13 order directed Mr. Mascarenas 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. The August 13 order warned Mr. Mascarenas that if he failed to cure the designated deficiencies within thirty days, the application would be denied and the action dismissed without prejudice and without further notice.

On August 21, 2014, the copy of the August 13 order mailed to Mr. Mascarenas was returned to the Court as undeliverable, indicating that he no longer was in custody. See ECF No. 4. Mr. Mascarenas has failed to cure the designated deficiencies within the time allowed or otherwise to communicate with the Court in any way. Therefore, the application will be denied and the action dismissed without prejudice for Mr. Mascarenas' failure to cure the designated deficiencies 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. Mascarenas 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, Tony Mascarenas, to cure the deficiencies designated in the order to cure of August 13, 2014, within the time allowed, and for his failure to prosecute. 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. It is

FURTHER ORDERED that the clerk of the Court mail a copy of this order to Mr. Mascarenas at his last known address.

DATED at Denver, Colorado, this 18th day of September, 2014.

BY THE COURT:

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