

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-02414-BNB

DEAN RAYMOND GARCIA,

Applicant,

v.

TERRY MAKETA, El Paso County Sheriff,

Respondent.

ORDER OF DISMISSAL

On August 29, 2014, Applicant, Dean Raymond Garcia, initiated this action by filing *pro se* a Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241 and submitting the \$5 filing fee. At the time he filed this action, Applicant was detained at the El Paso Criminal Justice Center in Colorado Springs, Colorado. On August 29, 2014, Magistrate Judge Boyd N. Boland entered an order and directed Applicant to submit his claims on a proper Court-approved forms. Applicant was warned that the action would be dismissed without further notice if he failed to cure the deficiency within thirty days.

On September 23, 2014, Applicant submitted a Prisoner's Motion and Affidavit for Leave to Proceed on Appeal Pursuant to 28 U.S.C. § 1915 and Fed. R. App. P. 24 in a Criminal Case. Magistrate Judge Boland then entered a minute order and directed Applicant to explain to the Court, by October 8, 2014, why he had filed the Motion and Affidavit and reminded him that he was required to submit his claims on a proper Court-approved form.

On October 6, 2014, the envelope that contained the Order to Cure Deficiency sent to Applicant was returned to the Court and marked "Return to Sender Attempted Not Known Unable to Forward." Rule 11.1(d) of the Local Rules of Practice of the

United States District Court for the District of Colorado-Civil states that a party must file a notice of a new address within five days of any change of address. Applicant has not submitted a change of address.

Because Applicant has failed to communicate with the Court and failed to cure the deficiency within the time allowed, the Court will dismiss the action.

The Court also certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order is not taken in good faith, and, therefore, *in forma pauperis* status is denied for the purpose of appeal. See *Coppedge v. United States*, 369 U.S. 438 (1962). If Applicant 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 Tenth Circuit within thirty days in accordance with Fed. R. App. P. 24. Accordingly, it is

ORDERED that the action is dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b) for failure to cure the deficiency and for failure to prosecute. It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied. It is

FURTHER ORDERED that no certificate of appealability shall issue because Applicant has failed to show that jurists of reason would find it debatable that the district court was correct in its procedural ruling. See *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000).

DATED at Denver, Colorado, this 16th day of October, 2014.

BY THE COURT:

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