

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-02485-BNB

KEVIN MONTGOMERY,

Applicant,

v.

[NO NAMED RESPONDENT]

Respondent.

ORDER OF DISMISSAL

Applicant, Kevin Montgomery, a prisoner detained at the Adams County Detention Facility, initiated this action on September 5, 2014, by submitting *pro se* a letter challenging his pretrial detention. On September 10, 2014, Magistrate Judge Boyd N. Boland reviewed Mr. Montgomery's letter and determined that it was deficient. Magistrate Judge Boland advised Mr. Montgomery that he needed to file an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 on the court-approved form and a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action. Magistrate Judge Boland warned Mr. Montgomery in the September 10 Order that failure to cure the designated deficiencies may result in dismissal of this action without further notice.

On September 24, 2014, Mr. Montgomery submitted a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915. On September 25, 2014, Magistrate Judge Boland entered a minute order (ECF No. 5) informing Mr. Montgomery that he filed the § 1915 motion on the incorrect form. Magistrate Judge

Boland reminded Mr. Montgomery that he had thirty days to file 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 form, or pay the \$5.00 filing fee. Mr. Montgomery also was advised that he must submit an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 on the court-approved form. He was warned that failure to comply with the minute order and the September 10 order may result in dismissal of this action without further notice.

On September 29, 2014, Mr. Montgomery submitted a "Motion to Dismiss Constitutional Violations that Shocks the Conscience" (ECF No. 6) and one CD of audio recording (ECF No. 7) as an exhibit to the Motion. This filing does not comply with the court's orders. Mr. Montgomery has now failed to file 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 in compliance with the September 10 and 25 orders. 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, Kevin Montgomery, to comply with the court's September 10 order to cure (ECF No. 3) and September 25 minute order (ECF No. 5). 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. Montgomery 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 the Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 4) is denied. It is

FURTHER ORDERED that the "Motion to Dismiss for Constitutional Violations that Shocks the Conscience" (ECF No. 6) is denied.

DATED at Denver, Colorado, this 5th day of November, 2014.

BY THE COURT:

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