

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-00199-GPG

CRAIG HOLLIS,

Applicant,

v.

JAMES FAULK,

Respondent.

ORDER OF DISMISSAL

Applicant, Craig Hollis, is a prisoner in the custody of the Colorado Department of Corrections. Mr. Hollis initiated this action by filing *pro se* an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (ECF No. 1) purportedly challenging the validity of his conviction or sentence in Logan County District Court case number 13CR151.

On February 22, 2015, Magistrate Judge Gordon P. Gallagher ordered Mr. Hollis to file an amended application that clarifies the claims he is asserting. Magistrate Judge Gallagher noted that Mr. Hollis failed to allege facts that explain why he believes his custody is unlawful, he failed to provide a clear statement of any claim that demonstrates his federal constitutional rights have been violated, and it was not even clear whether Mr. Hollis was challenging the validity of his conviction and sentence or whether he was challenging the execution of his sentence. Magistrate Judge Gallagher advised Mr. Hollis that the pleading rules applicable to a habeas corpus action are more

demanding than the rules applicable to ordinary civil actions, see *Mayle v. Felix*, 545 U.S. 644, 655 (2005), and that naked allegations of constitutional violations are not cognizable in a habeas corpus action, see *Ruark v. Gunter*, 958 F.2d 318, 319 (10th Cir. 1992) (per curiam). On March 24, 2015, Mr. Hollis filed an amended application for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 (ECF No. 8) and a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 9). The Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 will be denied as moot because Mr. Hollis previously was granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 in this action.

The Court must construe the amended application liberally because Mr. Hollis is not represented by an attorney. See *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). However, the Court should not be an advocate for a *pro se* litigant. See *Hall*, 935 F.2d at 1110. For the reasons stated below, the Court will dismiss the action.

The Court has reviewed the amended application and finds that Mr. Hollis still fails to provide a clear statement of any federal constitutional claims. Mr. Hollis contends he should not have to serve more time than his original sentence and he asks to be released on his original mandatory release date of July 23, 2015. However, he does not claim his federal constitutional rights have been violated and he does not allege specific facts that might support an arguable federal constitutional claim. In fact, the claim Mr. Hollis asserts in the amended application is nearly identical to the claim he asserted in the original application that Magistrate Judge Gallagher determined was deficient.

The instant action will be dismissed without prejudice because Mr. Hollis fails to assert clearly any violations of his federal constitutional rights. Furthermore, 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 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 Applicant files a notice of appeal he also must 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. Accordingly, it is

ORDERED that the habeas corpus application (ECF No. 1) and the amended application (ECF No. 8) are denied and the action is dismissed without prejudice for the reasons specified in this order. 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 without prejudice to the filing of a motion seeking leave to proceed *in forma pauperis* on appeal in the United States Court of Appeals for the Tenth Circuit. It is

FURTHER ORDERED that the Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 9) is denied as moot.

DATED at Denver, Colorado, this 27th day of March, 2015.

BY THE COURT:

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