

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-00453-GPG

DARIN S. WHATLEY,

Applicant,

v.

TRAVIS TRANI, Warden, and
ATTORNEY GENERAL, STATE OF COLORADO,

Respondents.

ORDER OF DISMISSAL

Applicant, Darin S. Whatley, is a prisoner in the custody of the Colorado Department of Corrections. Mr. Whatley initiated this action by filing *pro se* a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action (ECF No. 1). The instant habeas corpus action was commenced and, on March 4, 2015, Magistrate Judge Gordon P. Gallagher entered an order directing Mr. Whatley to cure certain deficiencies if he wished to pursue any claims. Specifically, Magistrate Judge Gallagher ordered Mr. Whatley to file an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 and either to pay the \$5.00 filing fee for a habeas corpus action or to submit a certificate showing the current balance in his inmate account. Mr. Whatley was warned that the action would be dismissed without further notice if he failed to cure the deficiencies within thirty days.

Mr. Whatley has failed to cure the deficiencies within the time allowed and he has failed to respond in any way to Magistrate Judge Gallagher's March 4 order. Therefore,

the action will be dismissed without prejudice for failure to cure the deficiencies.

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 action is dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure because Mr. Whatley failed to cure the deficiencies as directed. 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 in a Habeas Corpus Action (ECF No. 1) is denied as moot.

DATED at Denver, Colorado, this 9th day of April, 2015.

BY THE COURT:

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