

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-00475-GPG

LUKE IRVIN CHRISCO,

Plaintiff,

v.

RICK RAEMISCH, Exec. Dir. CDOC,  
DAVID M. JOHNSON, Warden DRDC [struck] [no longer at DRDC], and  
LAURIE TAFOYA, Warden, San Carlos Prison, Pueblo, Colorado Republic, [party  
added due to custody transfer],

Defendants.

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ORDER OF DISMISSAL

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Plaintiff, Luke Irvin Chrisco, is a prisoner in the custody of the Colorado Department of Corrections. Mr. Chrisco initiated this action by filing *pro se* a “Petition for Writ of Habeas Corpus Under 28 USC 2241 and for Equitable Relief” (ECF No. 1) and a “Declaration in Support of Request to Proceed In Forma Pauperis” (ECF No. 3). On March 9, 2015, Magistrate Judge Gordon P. Gallagher entered an order directing Mr. Chrisco to cure certain deficiencies if he wished to pursue his claims. Magistrate Judge Gallagher specifically directed Mr. Chrisco to file on the court-approved forms 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. Because the nature of his claims was not clear, Magistrate Judge Gallagher directed Mr. Chrisco to use the court-approved Prisoner Complaint form if he is challenging the conditions of his confinement and not the execution of his sentence.

Mr. Chrisco was warned that the action would be dismissed without further notice if he failed to cure the deficiencies within thirty days.

On March 31, 2015, Mr. Chrisco filed an amended pleading using a non-prisoner complaint form that is captioned "Complaint, Petition for a Writ of Habeas Corpus Under 28 USC 2241 and for Equitable Relief" (ECF No. 5). The amended pleading does not include any claims for relief and merely incorporates by reference the claims in the original pleading. Mr. Chrisco also filed on a non-prisoner form an "Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form)" (ECF No. 6).

On April 1, 2015, Magistrate Judge Gallagher entered a minute order in this action. The minute order advises Mr. Chrisco that the documents he filed on March 31 did not cure the deficiencies; reiterates the deficiencies that must be cured; allows an extension of time to cure the deficiencies; directs the clerk of the Court to mail to Mr. Chrisco blank copies of the proper forms needed to cure the deficiencies; and instructs Mr. Chrisco that he must reassert his claims in an amended pleading on the proper, court-approved form. Magistrate Judge Gallagher also reminded Mr. Chrisco that the action would be dismissed without further notice if he failed to cure the deficiencies within the time allowed. The court-approved forms needed to cure the deficiencies were mailed to Mr. Chrisco. (See ECF No. 8.)

Mr. Chrisco has not cured the deficiencies within the time allowed and he has not responded in any way to the minute order entered by Magistrate Judge Gallagher on April 1. 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 Plaintiff 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. Chrisco 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 “Declaration in Support of Request to Proceed In Forma Pauperis” (ECF No. 3) and the “Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form)” (ECF No. 6) are denied as moot.

DATED at Denver, Colorado, this 7<sup>th</sup> day of May, 2015.

BY THE COURT:

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