

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-01062-GPG

JEREMIAH J. KENNEDY,

Applicant,

v.

PEOPLE OF THE STATE OF COLORADO, et al., and  
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

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ORDER DIRECTING APPLICANT TO FILE SECOND AMENDED APPLICATION

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Applicant, Jeremiah J. Kennedy, is a prisoner in the custody of the Colorado Department of Corrections. Mr. Kennedy 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). On June 10, 2015, he filed an amended Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (ECF No. 4). Mr. Kennedy indicates he is challenging the validity of his conviction and sentence in Arapahoe County District Court case number 07CR2692.

The court must construe the amended application liberally because Mr. Kennedy 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 (10<sup>th</sup> Cir. 1991). However, the court should not be an advocate for a *pro se* litigant. *See Hall*, 935 F.2d at 1110. Mr. Kennedy will be ordered to file a second amended application if he wishes to pursue any federal constitutional claims in this action.

The amended application is deficient. First, the law is well-established that the only proper respondent to a habeas corpus action is the applicant's custodian. See 28 U.S.C. § 2242; Rules 2(a), Rules Governing Section 2254 Cases in the United States District Courts; *Harris v. Champion*, 51 F.3d 901, 906 (10<sup>th</sup> Cir. 1995). Mr. Kennedy alleges that he currently is incarcerated at the Arrowhead Correctional Center. Therefore, the proper Respondent is his custodian at that facility.

The amended application also is deficient because Mr. Kennedy does not assert any claims for relief. Although the court must construe the application liberally, "the court cannot take on the responsibility of serving as the litigant's attorney in constructing arguments and searching the record." *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10<sup>th</sup> Cir. 2005).

Mr. Kennedy is advised that habeas corpus relief is warranted only if he "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). Pursuant to Rules 2(c)(1) and 2(c)(2) of the Rules Governing Section 2254 Cases in the United States District Courts, Mr. Kennedy must identify the specific federal constitutional right allegedly violated in each claim he is asserting and he must provide specific factual allegations in support of each asserted claim. These habeas corpus rules are more demanding than the rules applicable to ordinary civil actions, which require only notice pleading. See *Mayle v. Felix*, 545 U.S. 644, 655 (2005). "A prime purpose of Rule 2(c)'s demand that habeas petitioners plead with particularity is to assist the district court in determining whether the State should be ordered to 'show cause why the writ should not be granted.'" *Id.* at 656 (quoting 28 U.S.C. § 2243). Naked allegations of constitutional violations are not cognizable in a

habeas corpus action. See *Ruark v. Gunter*, 958 F.2d 318, 319 (10<sup>th</sup> Cir. 1992) (per curiam). Accordingly, it is

ORDERED that, **within thirty (30) days from the date of this order**, Mr. Kennedy file a second amended application that provides a clear statement of the federal constitutional claims he is asserting. It is

FURTHER ORDERED that Mr. Kennedy shall obtain the appropriate, court-approved Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 form (with the assistance of his case manager or the facility's legal assistant), along with the applicable instructions, at [www.cod.uscourts.gov](http://www.cod.uscourts.gov). It is

FURTHER ORDERED that, if Mr. Kennedy fails within the time allowed to file a second amended application that complies with this order, the action will be dismissed without further notice.

DATED June 12, 2015, at Denver, Colorado.

BY THE COURT:

S/ Gordon P. Gallagher

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United States Magistrate Judge