

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-01267-GPG

RICHARD R. CORTEZ,

Applicant,

v.

K. KLINE,
KIT CARSON CORRECTIONAL CENTER,

Respondents.

ORDER DIRECTING APPLICANT TO CURE DEFICIENCIES

Applicant, Richard R. Cortez, is in the custody of the Colorado Department of Corrections (CDOC) at the Kit Carson Correctional Facility in Burlington, Colorado. Mr. Cortez initiated this action by filing an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 (ECF No. 1). He has paid the \$5.00 filing fee.

In the § 2241 Application, Mr. Cortez claims that: (1) he was denied the effective assistance of counsel at trial; (2) there was insufficient evidence to support his state criminal conviction(s); (3) he was not competent to stand trial; (4) the trial court admitted unreliable identification evidence at trial; and, (5) he was entitled to a jury trial on the habitual criminal counts. For relief, he asks that his state court convictions be vacated and that he be afforded a new trial.

“Petitions under § 2241 are used to attack the execution of a sentence, see *Bradshaw v. Story*, 86 F.3d 164, 166 (10th Cir.1996), while a petition under § 2254 challenges the validity of a state court conviction or sentence. See *McIntosh v. United*

States Parole Comm'n, 115 F.3d 809, 811 (10th Cir. 1997). All of Mr. Cortez's claims challenge the validity of his state court convictions and sentence(s). Therefore, Applicant must seek relief under 28 U.S.C. § 2254, not § 2241.

After pursuant to D.C.COLO.LCivR 8.1(a), the Court has determined that the submitted document is deficient as described in this order. Mr. Cortez will be directed to cure the following if he wishes to pursue his claims. Any papers that the Mr. Cortez files in response to this order must include the civil action number on this order.

28 U.S.C. § 1915 Motion and Affidavit:

- (1) ___ is not submitted
- (2) ___ is missing affidavit
- (3) ___ is missing certified copy of prisoner's trust fund statement for the 6-month period immediately preceding this filing
- (4) ___ is missing certificate showing current balance in prison account
- (5) ___ is missing required financial information
- (6) ___ is missing an original signature by the prisoner

- (7) ___ is not on proper form (must use the court's current form):
- (8) ___ names in caption do not match names in caption of complaint, petition or habeas application
- (9) ___ other:

Complaint, Petition or Application:

- (10) ___ is not submitted
- (11) X is not on proper form (must use the court-approved form for filing an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254).
- (12) ___ is missing an original signature by the prisoner
- (13) ___ is missing page nos. ___
- (14) ___ uses et al. instead of listing all parties in caption
- (15) ___ names in caption do not match names in text
- (16) ___ addresses must be provided for all defendants/respondents in "Section A. Parties" of complaint, petition or habeas application
- (17) ___ other:

Accordingly, it is

ORDERED that Mr. Cortez cure the deficiencies designated above **within thirty (30) days from the date of this order**. Any papers that Mr. Cortez files in response to this order must include the civil action number on this order. It is

FURTHER ORDERED that Mr. Cortez, with the assistance of his case manager or the facility's legal assistant, shall obtain the Court-approved form for filing an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 at www.cod.uscourts.gov. Applicant shall re-submit his claims on the court-approved form. It is

FURTHER ORDERED that, if Mr. Cortez fails to cure the designated deficiencies **within thirty (30) days from the date of this order**, this action will be dismissed without further notice. The dismissal shall be without prejudice.

DATED June 16, 2015, at Denver, Colorado.

BY THE COURT:

s/ Gordon P. Gallagher
United States Magistrate Judge