

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-01573-GPG

JAY ANTHONY RICHITELLI,

Applicant,

v.

[NO RESPONDENT NAMED],

Respondent.

ORDER OF DISMISSAL

Applicant, Jay Anthony Richitelli, is a prisoner in the custody of the Federal Bureau of Prisons. Mr. Richitelli initiated this action by filing *pro se* a “Request for Writ of Habeas Corpus (§ 2241)” (ECF No. 1). On July 24, 2015, Magistrate Judge Gordon P. Gallagher entered an order directing Mr. Richitelli to cure certain deficiencies if he wished to pursue his claims. Magistrate Judge Gallagher specifically directed Mr. Richitelli to file on the proper form an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 and either to pay the \$5.00 filing fee for a habeas corpus action or to file a Prisoner’s Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action along with a certificate showing the current balance in his inmate account. Mr. Richitelli was warned that the action would be dismissed without further notice if he failed to cure the deficiencies within thirty days.

Mr. Richitelli has not cured the deficiencies in this action within the time allowed. However, on August 3, 2015, he submitted to the Court a letter (ECF No. 4) stating he

was going to be transferred to a prison outside of Colorado within a few weeks and asking whether he should withdraw this action in order to refile it in the district of his confinement after his transfer or if this action can be transferred. Mr. Richitelli has not filed any other papers in this action indicating he has been transferred and he has not advised the Court of any change of address. Therefore, the Court will not transfer this action. Instead, the action will be dismissed without prejudice for failure to cure the deficiencies.

The Court also 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 “Request for Writ of Habeas Corpus (§ 2241)” (ECF No. 1) is denied and the action is dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure because Mr. Richitelli failed to cure the deficiencies as directed. 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.

DATED at Denver, Colorado, this 28th day of August, 2015.

BY THE COURT:

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