

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-01717-GPG

MERLYON BLACKBURN,

Applicant,

v.

RICK RAEMISCH, Exec. Director C.D.O.C., Warden,
WARDEN HARDLEY, C.M.R.C., and
EL PASO COUNTY DISTRICT COURT,

Respondents.

ORDER OF DISMISSAL

Applicant, Merlyon Blackburn, was in the custody of the Colorado Department of Corrections at the Cheyenne Mountain Re-Entry Center in Colorado Springs, Colorado when he initiated this action by filing *pro se* an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 (ECF No. 1) and a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action (ECF No. 2). On August 11, 2015, Magistrate Judge Gordon P. Gallagher entered an order directing Mr. Blackburn to cure certain deficiencies if he wished to pursue his claims. Magistrate Judge Gallagher specifically directed Mr. Blackburn either to pay the \$5.00 filing fee for a habeas corpus action or to submit a signed and dated Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action. Mr. Blackburn was warned that the action would be dismissed without further notice if he failed to cure the deficiencies within thirty days.

Mr. Blackburn has not cured the deficiencies in this action within the time

allowed. Therefore, 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 Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 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. Blackburn 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. 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. 2) is denied as moot.

DATED at Denver, Colorado, this 17th day of September, 2015.

BY THE COURT:

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