

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-01792-GPG

JAN B. HAMILTON,

Applicant,

v.

D. MULDOON, Capt. Park County,
DON BIRD, Pitkin County, and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

ORDER DIRECTING APPLICANT TO FILE AN AMENDED APPLICATION

Applicant, Jan B. Hamilton, is serving a sentence at the Park County Jail. She initiated this action by filing an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254. (ECF No. 1). Ms. Hamilton has paid the \$5.00 filing fee. (*Id.*).

The Court must construe the Application liberally because Ms. Hamilton is representing herself. See *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). However, the Court should not be the *pro se* litigant's advocate. *Hall*, 935 F.2d at 1110. For the reasons stated below, Ms. Hamilton will be directed to file an Amended Application.

In the Application, Applicant alleges that she is challenging a March 12, 2015 sentence entered in Case No. 10CR76 in the County Court of Pitkin County, after she violated probation. (ECF No. 1, at 4-5). However, Ms. Hamilton also refers to four other criminal cases: 14M30, 14M143, 10CR16, and 11CR 38. Applicant's allegations are difficult to decipher and it is not clear for which criminal case(s) she seeks federal

habeas relief.

Ms. Hamilton is reminded that she may not challenge the sentencing orders in Pitkin County Court Case Nos. 10CR76 and 11CR38 in this action because she is already seeking federal habeas relief on those cases in Civil Action No. 15-cv-01691. A duplicative suit is subject to dismissal as frivolous or malicious under 28 U.S.C.

§ 1915(e)(2). See *McWilliams v. State of Colorado*, 121 F.3d 573, 574-75 (10th Cir. 1997) (citing *Bailey v. Johnson*, 846 F.2d 1019, 1021 (5th Cir. 1988)); see also *Griffin v. Zavaras*, No. 09-1165, 336 F. App'x 846, 849 (10th Cir. July 14, 2009) (unpublished).

Accordingly, if Applicant is attempting to challenge a conviction and/or sentence in Pitkin County Court Case Nos. 14M30, 14M143, or 10CR16, she must file an amended Application, on the court-approved form, and state clearly that she is challenging one or more of those specific criminal convictions. Ms. Hamilton is also reminded that she must first exhaust available administrative remedies before seeking federal habeas corpus relief. See 28 U.S.C. § 2254(b).

In addition, the Amended Application that Ms. Hamilton files must comply with Rule 8 of the Federal Rules of Civil Procedure. The Federal Rules of Civil Procedure apply to applications for habeas corpus relief. See Fed. R. Civ. P. 81(a)(4); *Browder v. Director, Dep't of Corrections*, 434 U.S. 257, 269 (1978); *Ewing v. Rodgers*, 826 F.2d 967, 969-70 (10th Cir. 1987). Pursuant to Fed. R. Civ. P. 8(a), a pleading “shall contain (1) a short and plain statement of the basis for the court’s jurisdiction, . . . (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for the relief sought.” Fed. R. Civ. P. 8(d)(1) provides that “[e]ach allegation must be simple, concise, and direct.” Taken together, Rules 8(a) and (d)(1) underscore

the emphasis placed on clarity and brevity by the federal pleading rules. Prolix, vague, or unintelligible pleadings violate the requirements of Rule 8. In addition, Rule 4(c) of the Rules Governing Section § 2254 Cases in the United States District Courts requires that an application “specify all grounds for relief available to the petitioner” and “state the facts supporting each ground.” Accordingly, it is

ORDERED that Applicant shall file an Amended Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254, on the court-approved form, within thirty (30) days of this Order. It is

FURTHER ORDERED that the Clerk of the Court shall mail to Plaintiff a copy of the court-approved form. Ms. Hamilton shall use the form in complying with this Order and must include the civil action number on the Amended Application. It is

FURTHER ORDERED that if Applicant fails to file an Amended Application by the court-ordered deadline, this action will be dismissed without further notice.

DATED August 20, 2015, at Denver, Colorado.

BY THE COURT:

S/ Gordon P. Gallagher

United States Magistrate Judge