

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 15-cv-02116-LTB

JOHN OTIS MORRIS,

Applicant,

v.

**FALK, Warden, Limon Correctional Facility; and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,**

Respondents.

ORDER OF DISMISSAL

Applicant, John O. Morris, is a prisoner in the custody of the Colorado Department of Corrections at the Limon Correctional Facility in Limon City, Colorado. The Court must construe the application and other papers filed by Mr. Morris liberally because he 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 (10th Cir. 1991). However, the Court should not be an advocate for a *pro se* litigant. *See Hall*, 935 F.2d at 1110. For the reasons stated below, the action will be dismissed for lack of jurisdiction.

On September 23, 2015, Applicant submitted to the court a Letter regarding filing a habeas corpus action under 28 U.S.C. § 2254 (ECF No. 1). As part of the court's review pursuant to D.C.COLO.LCivR 8.1(b), the court determined that Mr. Morris' pleadings were deficient. In an order entered on October 7, 2015, Magistrate Judge Gordon P. Gallagher directed Applicant to cure certain deficiencies if he wished to pursue his claims. Specifically, Magistrate Judge Gallagher informed Applicant that he was required to file an

application for writ of habeas corpus pursuant to 28 U.S.C. § 2254 if he wished to pursue his action (ECF No. 4). That Order specifically informed Applicant that this action would be dismissed without further notice if he failed to file an application for writ of habeas corpus within thirty days.

In response, Applicant has informed the Court that he has filed an application to file a second or successive application for writ of habeas corpus with the Court of Appeals for the Tenth Circuit in accordance with the directives of 28 U.S.C. § 2244 (ECF No. 5). Pursuant to 28 U.S.C. § 2244(b)(3)(A), Mr. Morris must apply to the United States Court of Appeals for the Tenth Circuit for an order authorizing this Court to consider his second or successive habeas corpus application. See *In re Cline*, 531 F.3d 1249, 1252 (10th Cir. 2008) (*per curiam*). In the absence of such authorization, the Court lacks jurisdiction to consider the merits of the claims asserted in a second or successive § 2254 application. See *id.* at 1251. Therefore, this action will be dismissed without prejudice to refiling if Applicant receives the required authorization for the Court of Appeals.

The Court also certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order is not taken in good faith, and, therefore, *in forma pauperis* status is denied for the purpose of appeal. See *Coppedge v. United States*, 369 U.S. 438 (1962). If Applicant files a notice of appeal he must also pay the full \$505 appellate filing fee or file a motion to proceed *in forma pauperis* in the Tenth Circuit within thirty days in accordance with Fed. R. App. P. 24. Accordingly, it is

ORDERED that this action is dismissed without prejudice. It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied.

DATED at Denver, Colorado, this 13th day of November, 2015.

BY THE COURT:

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