

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-02275-GPG

OSCAR JAMES MITCHELL,

Applicant,

v.

[NO NAMED RESPONDENT],

Respondent.

ORDER OF DISMISSAL

Applicant Oscar James Mitchell is in the custody of the Federal Bureau of Prisons and currently is incarcerated at the United States Penitentiary in Florence, Colorado. Applicant initiated this action by filing a Letter, in which he indicates he is attempting to file an action pursuant to 28 U.S.C. § 2241 regarding his placement in community corrections.

In an order entered on October 14, 2015, Magistrate Judge Gordon P. Gallagher directed Applicant to cure certain deficiencies if he wished to pursue his claims. Specifically, Magistrate Judge Gallagher directed Applicant to submit a request to proceed pursuant to 28 U.S.C. § 1915 on a proper Court-approved form or in the alternative pay the \$5 filing fee and to file his claims on a Court-approved form used in filing 28 U.S.C. § 2241 actions. Magistrate Judge Gallagher warned Applicant that the

action would be dismissed without further notice if he failed to cure the deficiencies within thirty days.

On November 3, 2015, Applicant submitted a Letter and claimed that he has not been able to receive “fare [sic] & consideration from unit team Case Manager Ms. Allen threw [sic] the instruction of warden of USP Florence.” Letter, ECF No. 4. Applicant contends that as a result he has not been able to cure deficiencies. Applicant requested in the Letter that he be allowed an additional ninety days to obtain the proper forms.

Magistrate Judge Gallagher entered a Minute Order on November 3, 2015, that granted Applicant an additional thirty days to obtain the forms. Magistrate Judge Gallagher found that, even though Applicant claimed he was having difficulties obtaining the necessary forms to cure deficiencies, his claim of interference was conclusory and vague. Applicant did not state that he had requested the forms but his request had been denied. Applicant was reminded that the forms are available at www.cod.uscourts.gov and through a request from either a case manager or a facility legal assistant.

On November 23, 2015, Applicant filed an incomplete Prisoner’s Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action. ECF No. 7. Applicant failed to comply with the directive on Page Two of the § 1915 Motion and attach a certificate of the warden or other appropriate officer of the institution in which he is confined as to the amount of money or securities currently on deposit in his inmate account. Applicant also has not submitted his claims on a proper Court-approved form used in filing a 28 U.S.C. § 2241 action and does not assert that he has requested a § 2241 form but was denied the form. The fact that Applicant was able to obtain a § 1915 Motion form indicates he does have access to the necessary forms to comply with the October 14, 2015 Order to Cure Deficiencies.

Because Applicant now has failed to comply with the October 14, 2015 Order to Cure Deficiencies, and cure the deficiencies within the time allowed, the Court will dismiss the action.

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 the action is dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b) for failure to cure deficiencies within the time allowed and for failure to prosecute. It is

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

DATED at Denver, Colorado, this 11th day of December 2015.

BY THE COURT:

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