

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-02367-GPG

JEFFREY SCOTT SHIRK,

Applicant,

v.

[NO RESPONDENT NAMED],

Respondent.

ORDER OF DISMISSAL

Applicant, Jeffrey Scott Shirk, is an inmate at the Larimer County Detention Facility in Fort Collins, Colorado. Mr. Shirk initiated this action by filing *pro se* two documents (ECF Nos. 1 & 3) that indicate he intends to seek habeas corpus relief. The instant action was commenced and, on October 26, 2015, Magistrate Judge Gordon P. Gallagher entered an order directing Mr. Shirk to cure certain deficiencies if he wishes to pursue his claims. In particular, Magistrate Judge Gallagher ordered Mr. Shirk to file an application for a writ of habeas corpus on the proper form and either to pay the filing fee or to file a properly supported motion to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. Mr. Shirk was warned that the action would be dismissed without further notice if he failed to cure the deficiencies within thirty days.

Mr. Shirk has failed to cure the deficiencies within the time allowed and he has failed to respond to Magistrate Judge Gallagher's October 26 order in any way. Therefore, the action will be dismissed without prejudice for failure to cure the

deficiencies. Furthermore, the Court 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 action is dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure because Mr. Shirk failed to cure the deficiencies as directed. It is

FURTHER ORDERED that no certificate of appealability will issue because Applicant has not made a substantial showing of the denial of a constitutional right. 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 2nd day of December, 2015.

BY THE COURT:

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