

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-02450-GPG

PAUL WAYNE SPENCE,

Plaintiff,

v.

JAMES FALK, Warden,
STATE OF COLORADO,
CITY OF DENVER, and
CYNTHIA HOFFMAN, Colorado Attorney General,

Defendants.

ORDER DIRECTING PLAINTIFF TO CURE DEFICIENCIES

Plaintiff, Paul Wayne Spence, is in the custody of the Colorado Department of Corrections and is incarcerated at the Correctional Facility in Limon, Colorado. Mr. Spence initiated this action by filing *pro se* a Prisoner Complaint (ECF No. 1) and two motion seeking leave to proceed *in forma pauperis* (ECF Nos. 3 and 4). In the Prisoner Complaint, he challenges the constitutionality of his state criminal conviction. He seeks a declaration that his constitutional rights were violated in his state criminal proceeding, as well as damages.

Mr. Spence's claims for money damages are barred by the rule in *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994), which held that a state prisoner may not recover damages under § 1983 if a favorable judgment would necessarily imply the invalidity of his conviction unless the conviction has been invalidated. Mr. Spence may, however, seek to invalidate his criminal conviction through a writ of habeas corpus under 28 U.S.C.

§ 2254. The appropriate remedy in a habeas corpus proceeding is release from confinement, not damages. See *Preiser v. Rodriguez*, 411 U.S. 475, 489-90 (2005).

Mr. Spence therefore will be directed to file an amended Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 to assert the appropriate relief, if he wishes to proceed in this action.

As part of the Court's review pursuant to D.C.COLO.LCivR 8.1(b), the Court has determined that the documents are deficient as described in this order. Plaintiff will be directed to cure the following if he wishes to pursue his claims. Any papers that Plaintiff files in response to this order must include the civil action number noted above in the caption of this order.

28 U.S.C. § 1915 Motion and Affidavit:

- (1) is not submitted
- (2) is missing affidavit
- (3) is missing certified copy of prisoner's trust fund statement for the 6-month period immediately preceding this filing
- (4) is missing certificate showing current balance in prison account
- (5) is missing required financial information
- (6) is missing an original signature by the prisoner
- (7) is not on proper form
- (8) names in caption do not match names in caption of complaint, petition or habeas application
- (9) An original and a copy have not been received by the Court.
Only an original has been received.
- (10) other: Plaintiff may pay the \$5.00 filing fee in lieu of filing a § 1915 Motion and Affidavit

Complaint, Petition or Application:

- (11) is not submitted
- (12) is not on proper form (must use the Court's current form for filing an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254)
- (13) is missing an original signature by the prisoner
- (14) is missing page no.
- (15) uses et al. instead of listing all parties in caption
- (16) An original and a copy have not been received by the Court. Only an

- original has been received.
- (17) ___ Sufficient copies to serve each defendant/respondent have not been received by the Court.
- (18) ___ names in caption do not match names in text
- (19) X other: The City of Denver is not a proper respondent to a habeas corpus action.

Accordingly, it is

ORDERED that Plaintiff, Paul Wayne Spence, cure the designated deficiencies **within thirty (30) days from the date of this order.** Any papers that Plaintiff files in response to this order must include the civil action number on this order. It is

FURTHER ORDERED that Plaintiff shall obtain (with the assistance of his case manager or the facility's legal assistant) the Court-approved forms for filing a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action and an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254, along with the applicable instructions, at www.cod.uscourts.gov, and shall use all pages of those forms in curing the designated deficiencies. It is

FURTHER ORDERED that, if Plaintiff fails to cure the designated deficiencies **within thirty days from the date of this order**, this action may be dismissed without further notice.

DATED November 9, 2015, at Denver, Colorado.

BY THE COURT:

s/ Gordon P. Gallagher
United States Magistrate Judge