

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-02566-GPG

TONY E. POWELL,

Plaintiff/Petitioner,

v.

M.A. STANCIL, Warden

Defendants/Respondents.

ORDER OF DISMISSAL

Plaintiff Tony E. Powell is a federal prisoner currently incarcerated at the Florence High U.S. Penitentiary. On November 23, 2015, he submitted *pro se* a document titled "Consolidated Alternative Petition Under Provisions that are set forth in Rule 65(d)(2)(A) or (B) 28 U.S.C. § 2284(3), (APPLICATION) for Writ of Habeas Corpus Pursuant to 28 USC 2241." (ECF No. 1). As part of the Court's review pursuant to D.C.COLO.LCivR 8.1(a) and (b), the Court determined that the submitted document was deficient.

On November 30, 2015, Magistrate Judge Gordon P. Gallagher ordered Mr. Powell to cure certain deficiencies if he wished to pursue any claims. (ECF No. 3). Specifically, the Court informed Mr. Powell that it was difficult to determine exactly what he was seeking. If Mr. Powell was seeking a change in the place of his confinement, he must bring such claim in a Prisoner Complaint pursuant to *Bivens*. Mr. Powell was also directed that he must submit an Application to Proceed in District Court Without

Prepaying Fees or Costs on the current court-approved form, that he must submit a complaint or petition on the proper form, and the complaint or petition must include an original signature of Mr. Powell, as well as the addresses for all of the defendants/respondents. Mr. Powell was warned that the action would be dismissed without further notice if he failed to cure the deficiencies within thirty days.

Mr. Powell requested three separate extensions of time to cure the deficiencies (ECF Nos. 4, 6, 8), all of which the Court granted (ECF Nos. 5, 7, 9). The time for curing the deficiencies has now run. Mr. Powell has failed to comply with the November 30, 2015 Order within the time allowed.

Therefore, the action will be dismissed without prejudice for failure to prosecute and comply with the Court's order. 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 Mr. Powell 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. Powell failed to prosecute and comply with the Court's order. It is

FURTHER ORDERED that no certificate of appealability will issue because Mr. Powell 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 11th day of April, 2016.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, Senior Judge