

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-02732-GPG

U.S. DISTRICT COURT,

Plaintiff/Petitioner,

v.

RON LEE PHILEMONOF,

Defendant/Respondent.

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ORDER OF DISMISSAL

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Ron Lee Philemonof is in the custody of the Colorado Department of Corrections and currently is incarcerated at the Four Mile Correctional Center in Cañon City, Colorado. Mr. Philemonof initiated this action by filing *pro se* a pleading titled, "Motion to Schedule Hearing, Denver District Court," ECF No. 1, indicating that he possibly is challenging a state criminal conviction.

On December 18, 2015, Magistrate Judge Gordon P. Gallagher entered an order and directed Mr. Philemonof to cure certain deficiencies if he desired to proceed with an action. First, because it is not clear whether the action is a challenge to the validity or execution of his sentence, Magistrate Judge Gallagher directed Mr. Philemonof to clarify the intent of his filing by utilizing the correct Court-approved form for filing either a 28 U.S.C. § 2254 action (challenging validity of a conviction or sentence) or a 28 U.S.C. § 2241 action (challenging the execution of his sentence). Magistrate Judge Gallagher

also directed Mr. Philemonof to submit a request to proceed pursuant to 28 U.S.C. § 1915 or in the alternative pay the \$400 filing fee in full.

Magistrate Judge Gallagher warned Mr. Philemonof that the action would be dismissed without further notice if he failed to cure the deficiencies within thirty days. Because Mr. Philemonof now has failed to cure the deficiencies noted in the December 18 Order, within the time allowed, the Court will dismiss this action.

The Court 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 Mr. Philemonof files a notice of appeal he must also pay the full \$505.00 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 the deficiencies 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 25<sup>th</sup> day of January, 2016.

BY THE COURT:

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