

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 16-cv-00209-GPG

SHERRY ANN TYSON,

Applicant,

v.

THE PEOPLE OF THE STATE OF COLORADO,

Respondent.

ORDER OF DISMISSAL

Applicant was an inmate at the Jefferson County Detention Facility when she initiated this action by filing *pro se* a document (ECF No. 1) apparently seeking habeas corpus relief. The instant action was commenced and, on February 1, 2016, Magistrate Judge Gordon P. Gallagher ordered Applicant to cure certain deficiencies if she wished to pursue any claims. Specifically, Applicant was directed to file an application for a writ of habeas corpus on the proper form and to either pay the \$5.00 filing fee or file a motion seeking leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. Applicant was warned that the action would be dismissed without further notice if she failed to cure the deficiencies within thirty days.

On February 11, 2016, the copy of Magistrate Judge Gallagher's February 1, 2016 order that was mailed to Applicant at the Jefferson County Detention Facility was returned to the Court undelivered. (ECF No. 4). The returned envelope is stamped "NOT IN CUSTODY" and bears another stamp or sticker that reads "RETURN TO

SENDER, NOT DELIVERABLE AS ADDRESSED, UNABLE TO FORWARD.” (See *id.*)

Applicant has not cured the deficiencies in this action as directed and she has failed to respond in any way to Magistrate Judge Gallagher’s February 1, 2016 Order. She also has failed to file a notice of change of address within five days of any change of address as required by the Court’s local rules. See D.C.COLO.LCivR 5.1(c). Therefore, the action will be dismissed without prejudice for failure to prosecute and comply with the Court’s local rules. 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 she 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 Applicant failed to prosecute and comply with the Court’s local rules. 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 8th day of March, 2016.

BY THE COURT:

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