

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 16-cv-00295-GPG

PAUL EUGENE INMAN,

Applicant,

v.

LOU ARCHULETA, Warden, and  
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

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ORDER OF DISMISSAL

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Applicant Paul Eugene Inman is a prisoner in the custody of the Colorado Department of Corrections at the Fremont Correctional Facility in Cañon City, Colorado. Applicant has filed *pro se* an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254, ECF No. 4, and paid the \$5 filing fee.

The Court must construe the Application liberally because Applicant is not represented by an attorney. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). However, the Court should not act as an advocate for a *pro se* litigant. *See Hall*, 935 F.2d at 1110.

Applicant is challenging the validity of seventy-year criminal sentence for attempted first degree murder, conspiracy, and assault that he is serving as a result of his conviction in Mesa County District Court case number 96CR560. He specifically claims that his consecutive sentences were illegal because they were in violation of the *ex post facto* law.

Applicant has filed one other habeas corpus action in the District of Colorado that challenged the validity of his conviction and sentence in case number 96CR560 in Mesa County District Court, the same state criminal case as he challenges in this action. See *Inman v. Soares, et al.*, No. 01-cv-00998-RPM (D. Colo. Aug. 4, 2004), *dismissed on appeal*, No. 04-1351 (10th Cir. July 12, 2005), *cert. denied*, No. 05-7077 (Nov. 28, 2005). Applicant acknowledged on the Application form that he had filed Case No. 01-cv-00998-RPM and stated that it was dismissed on August 3, 2004. A review of the dismissal order in Case No. 01-cv-00998-RPM indicates this action was dismissed with prejudice on the merits. See *Id.* at 40. Therefore, the instant Application is a second or successive application.

Pursuant to 28 U.S.C. § 2244(b)(3)(A), Applicant must apply to the United States Court of Appeals for the Tenth Circuit for an order authorizing this Court to consider his second or successive habeas corpus application. See *In re Cline*, 531 F.3d 1249, 1252 (10th Cir. 2008) (per curiam). In the absence of such authorization, the Court lacks jurisdiction to consider the merits of the claims asserted in a second or successive § 2254 application. See *id.* at 1251. An applicant seeking authorization to file a second or successive application for a writ of habeas corpus pursuant to § 2254 must demonstrate that any claim he seeks to raise is based on “a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable,” 28 U.S.C. § 2244(b)(2)(A); or that “the factual predicate for the claim could not have been discovered previously through the exercise of due diligence” and “the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error,

no reasonable factfinder would have found the applicant guilty of the underlying offense.”  
28 U.S.C. § 2244(b)(2)(B).

Applicant does not allege, and there is no indication in the Application, that he has obtained authorization from the Tenth Circuit to file a second or successive § 2254 application. Therefore, the Court must either dismiss the Application for lack of jurisdiction or, if it is in the interest of justice, transfer the Application to the Tenth Circuit pursuant to 28 U.S.C. § 1631. *In re Cline*, 531 F.3d at 1252. The factors to be

considered in deciding whether a transfer is in the interest of justice include whether the claims would be time barred if filed anew in the proper forum, whether the claims alleged are likely to have merit, and whether the claims were filed in good faith or if, on the other hand, it was clear at the time of filing that the court lacked the requisite jurisdiction.

*Id.* at 1251. When “there is no risk that a meritorious successive claim will be lost absent a § 1631 transfer, a district court does not abuse its discretion if it concludes it is not in the interest of justice to transfer the matter.” *Id.* at 1252.

Applicant fails to demonstrate that his claim in this action is based on either a new and retroactive rule of constitutional law or newly discovered evidence as required pursuant to § 2244(b)(2). Therefore, the Court finds that a transfer is not in the interest of justice for that reason alone. *See id.*

Consideration of the other relevant factors also supports this conclusion. Although it appears that the Application would be time-barred if filed anew in the proper forum, it appears that the Application would be time-barred even if Applicant had sought proper authorization prior to filing in this Court. There also is no indication that the claim Applicant seeks to raise has any merit. Finally, it was clear when the instant action was

filed that this Court lacks jurisdiction over the Application. As a result, the Court finds that a transfer of this action to the Tenth Circuit is not in the interest of justice. Instead, the action will be dismissed for lack of jurisdiction.

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 Application, ECF No. 4, is denied and the action is dismissed for lack of jurisdiction. 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 11<sup>th</sup> day of February, 2016.

BY THE COURT:

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