

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 16-cv-00493-GPG

(The above civil action number must appear on all future papers sent to the court in this action. Failure to include this number may result in a delay in the consideration of your claims.)

UNITED STATES OF AMERICA,

Plaintiff/Petitioner,

v.

WILLIAM A. EMERT,

Defendant/Respondent.

ORDER DIRECTING MR. EMERT TO CURE DEFICIENCIES

On February 25, 2015, William A. Emert submitted to the Court a Motion for Writ of Habeas Corpus, ECF No. 1. Upon review of the Motion, the Court finds that Mr. Emert possibly is challenging a state criminal conviction or pending criminal proceeding. The only proper avenue to challenge a state criminal proceeding in this Court is by filing a habeas corpus action pursuant to 28 U.S.C. § 2241, if challenging the execution of a state criminal action, or pursuant to 28 U.S.C. § 2254, if challenging the validity of a state criminal action; but only after an applicant has exhausted state court remedies. Nonetheless, the Court will allow Mr. Emert the benefit of the doubt and provide him with the opportunity to proceed with this action if indeed his intent is to challenge his state sentence and/or parole pursuant to a proper federal statute.

As part of the Court's review pursuant to D.C.COLO.LCivR 8.1(b), the Court has determined that the filings are deficient as described in this Order. Mr. Emert will be directed to cure the following if he wishes to pursue any claims in this Court in this action. Any papers that Mr. Emert files in response to this Order must include the civil action number on 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 authorization to calculate and disburse filing fee payments
- (7) is missing an original signature by the prisoner
- (8) is not on proper form
- (9) names in caption do not match names in caption of complaint, petition or habeas application
- (10) other: In the alternative, Mr. Emert can pay the \$5 filing fee .

Complaint, Petition or Application:

- (11) is not submitted
- (12) is not on proper form
- (13) is missing an original signature by the prisoner
- (14) is missing page nos. _____
- (15) uses et al. instead of listing all parties in caption
- (16) names in caption do not match names in text
- (17) addresses must be provided for all defendants/respondents in "Section A. Parties" of complaint, petition or habeas application
- (18) other:

Accordingly, it is

ORDERED that Mr. Emert cure the deficiencies designated above **within thirty days from the date of this Order**. Any papers that Mr. Emert files in response to this Order must include the civil action number on this Order. It is

FURTHER ORDERED that Mr. Emert shall obtain the proper forms, depending on the type of habeas action Mr. Emert intends to file (with the assistance of his case manager or the facility's legal assistant), along with the applicable instructions, at www.cod.uscourts.gov. Mr. Emert must use a Court-approved form when curing the deficiencies. It is

FURTHER ORDERED that, if Mr. Emert fails to cure the designated deficiencies **within thirty days from the date of this Order**, the action will be dismissed without further notice.

DATED March 1, 2016, at Denver, Colorado.

BY THE COURT:

s/ Gordon P. Gallagher
United States Magistrate Judge