

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 16-cv-00493-GPG

UNITED STATES OF AMERICA,

Plaintiff/Petitioner,

v.

WILLIAM A. EMERT,

Defendant/Respondent.

ORDER OF DISMISSAL

Mr. William A. Emert is a detainee at the Denver County Jail in Denver, Colorado. On February 25, 2015, Mr. Emert initiated this action by submitting to the Court a Motion for Writ of Habeas Corpus, ECF No. 1. Upon review of the Motion, Magistrate Judge Gordon P. Gallagher found that Mr. Emert possibly is challenging a state criminal conviction or pending criminal proceeding. Magistrate Judge Gallagher entered an order on March and instructed Mr. Emert that 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 a petitioner has exhausted state court remedies.

Magistrate Judge Gallagher then told Mr. Emert that if indeed his intent is to challenge his state sentence and/or parole pursuant to a proper federal statute he must cure the deficiencies noted in the March 1 Order. Specifically, Magistrate Judge Gordon

directed Mr. Emert to file his claims on a Court-approved form and either to submit a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Action or in the alternative to pay the \$5 filing fee. Magistrate Judge Gallagher warned Mr. Emert that the action would be dismissed without further notice if he failed to cure the deficiencies within thirty days.

The time to cure now has run; and Mr. Emert has failed to comply with the March 1, 2016 Order within the time allowed. The Court, therefore, will dismiss this action.

The Court also 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 will be denied for the purpose of appeal. See *Coppedge v. United States*, 369 U.S. 438 (1962). If Mr. Emert files a notice of appeal he 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 is denied and the action is dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b) for failure to comply with the March 1, 2016 Order, within the time allowed, 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 7th day of April, 2016.

BY THE COURT:

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