

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

Civil Action No. 16-cv-00721-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.)

PETER FERRARA,

Applicant,

v.

MICHAEL MILLER, Warden, Crowley County Correctional Facility,

Respondent.

ORDER DIRECTING MR. FERRARA TO CURE DEFICIENCIES

Mr. Peter Ferrara initiated this action by filing an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 and a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action. In the Application, Mr. Ferrara asserts that Michael Miller has failed to provide adequate care for Mr. Ferrara's mental health needs. Mr. Ferrara is challenging the conditions of his confinement.

As part of the Court's review pursuant to D.C.COLO.LCivR 8.1(b), the Court has determined that the submitted documents are deficient as described in this Order. Mr. Ferrara will be directed to cure the following if he wishes to pursue his claims. Any papers that Mr. Ferrara files in response to this Order must include the civil action number on this Order.

Furthermore, Mr. Ferrara is instructed that his attempt to file this action pursuant to 28 U.S.C. § 2241 is improper. "The essence of habeas corpus is an attack by a person

in custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody.” See *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). Generally, a state prisoner who challenges the conditions of confinement must pursue a civil rights action. See *Sandifer v. Ledezma*, 653 F.3d 1276, 1280 (10th Cir. 2011).

28 U.S.C. § 1915 Motion and Affidavit:

- (1) ___ is not submitted
- (2) ___ is missing affidavit
- (3) ___ prisoner’s trust fund statement is not certified
- (4) ___ is missing required financial information
- (5) ___ is missing an original signature by the prisoner
- (6) ___ is not on proper form (must use the Court’s current form used in filing prisoner civil rights complaints)
- (7) ___ names in caption do not match names in caption of complaint, petition or habeas application
- (8) ___ An original and a copy have not been received by the court. Only an original has been received.
- (9) ___ other:

Complaint, Petition or Application:

- (10) ___ is not submitted
- (11) X is not on proper form (must use a Court-approved form used in filing prisoner civil rights complaints)
- (12) ___ is missing an original signature by the prisoner
- (13) ___ is missing page nos. _____
- (14) ___ uses et al. instead of listing all parties in caption
- (15) ___ An original and a copy have not been received by the court. Only an original has been received.
- (16) ___ Sufficient copies to serve each defendant/respondent have not been received by the court.
- (17) ___ names in caption do not match names in text
- (18) ___ other:

Accordingly, it is

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

FURTHER ORDERED that Mr. Ferrara shall obtain the proper Court-approved forms for filing a Prisoner Complaint, (with the assistance of his case manager or the facility's legal assistant), along with the applicable instructions, at www.cod.uscourts.gov for use in curing deficiencies. It is

FURTHER ORDERED that if Mr. Ferrara 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 29, 2016, at Denver, Colorado.

BY THE COURT:

s/Gordon P. Gallagher
United States Magistrate Judge