

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

.....

ALBERTO RESTO,

Petitioner,

-v.-

**9:08-CV-1204
(GLS)**

R. WOOD, Superintendent,

Respondent.

.....

APPEARANCES:

ALBERTO RESTO

Petitioner, *pro se*

GARY L. SHARPE

United States District Judge

DECISION and ORDER

On November 10, 2008, petitioner *pro se* Alberto Resto filed a petition for a writ of habeas corpus in this District. *See* Dkt. No. 1 ("Petition"). He thereafter filed an application in which he sought permission to proceed with this action *in forma pauperis*. Dkt. No. 3 ("*IFP* Application").

In its Decision and Order signed November 24, 2008, this Court noted that because the handwriting on Resto's petition is plainly illegible, the Court could not ascertain the grounds for relief asserted in the habeas petition or the facts in support of those grounds. *See* Decision and Order (11/24/08) (Dkt. No. 4) ("November Order") at p. 2 (citing Petition).

Since Resto's pleading failed to comply with the pleading requirements of Fed.R.Civ.P. 8(a), he was directed to file a legible, amended petition with the Court within thirty (30) days of the date of the filing of the November Order. November Order at p. 4. Petitioner was cautioned that if he failed to timely file that pleading, his action would be dismissed.

In that same order, the Court noted that the *in forma pauperis* application which Resto had filed was incomplete; he failed to answer three of the six questions contained on that form. See November Order at p. 3 (citing *IFP* Application at ¶¶ 3-6). Such application was therefore denied without prejudice to Resto submitting either a renewed, fully completed *in forma pauperis* application, or, alternatively, the \$5.00 filing fee required for his action. November Order at p. 3. Resto was advised that if he failed to either pay the \$5.00 filing fee or submit a signed, fully completed *in forma pauperis* application, within thirty (30) days from the date of the filing of the November Order, his petition would be dismissed. November Order at p. 4.

To date, Resto has failed to either submit an amended petition in this matter or request additional time from the Court to submit such pleading. On December 4, 2008, petitioner submitted a renewed *in forma pauperis* application. See Dkt. No. 5 ("Renewed *IFP* Application"). Unfortunately, as with his original *in forma pauperis* application, Resto failed to answer three of the six questions contained on his renewed *in forma pauperis* application. Compare *IFP* Application at ¶¶ 3-6 with Renewed *IFP* Application at ¶¶ 3-6.

Because: i) there is no legible pleading currently filed with the Court upon which any application for federal habeas relief could be granted; and ii) petitioner failed to timely file an amended petition in compliance with the terms of the November Order, this Court dismisses this action. Moreover, since the renewed *in forma pauperis* application completed by Resto is incomplete, that request is also denied.

WHEREFORE, based upon the foregoing, it is hereby

ORDERED, that this action is dismissed for the reasons stated above, and it is further

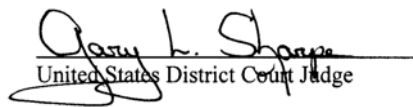
ORDERED, that Resto's renewed *in forma pauperis* application (Dkt. No. 5) is denied as

incomplete, and it is further

ORDERED, that the Clerk of the Court serve a copy of this Decision and Order on Resto.

IT IS SO ORDERED.

Dated: January 30, 2009


United States District Court Judge