

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION

RODNEY CROSBY  
ADC #141905

PETITIONER

V.

NO. 5:09cv00150 JMM-JWC

LARRY NORRIS, Director,  
Arkansas Department of Correction

RESPONDENT

ORDER

Respondent has filed a supplemental response (doc. 22) to this 28 U.S.C. § 2254 petition for writ of habeas corpus, asserting that Petitioner failed to properly raise his claims for relief in state court and, alternatively, that his mental incapacity claim is without merit. A federal habeas petition must be dismissed if a petitioner did not first timely and properly raise his claims in state court, unless he can show “cause” for his default and “actual prejudice” from the alleged violation of federal law, or demonstrate that failure to consider his claims would result in a “fundamental miscarriage of justice.” *Coleman v. Thompson*, 501 U.S. 722, 750 (1991). The narrow “fundamental miscarriage of justice” – or “actual innocence” – exception requires a petitioner (1) to support his allegations of constitutional error with new reliable evidence not presented at trial, and (2) to show, in light of the new evidence, “that it is more likely than not that ‘no reasonable juror’ would have convicted him.” *Schlup v. Delo*, 513 U.S. 298, 324, 329 (1995).

Petitioner is notified of his opportunity to file, on or before July 29, 2010, a written pleading, along with any available supporting documentation not submitted previously, in which he explains (1) why he did not file a state post-conviction petition pursuant to Ark. R. Crim. P. 37 in a timely manner after he was convicted, and (2) how he was prejudiced

by the constitutional violations he alleges. He may also address any other arguments raised by Respondent. When the Court receives Petitioner's pleading, the Court will decide whether this petition should be dismissed for the reasons stated by Respondent.

IT IS SO ORDERED this 29th day of June, 2010.

  
UNITED STATES MAGISTRATE JUDGE