

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Boyd N. Boland

Civil Action No. 07-cv-00617-CMA-BNB

RICHARD LEE MARTINEZ,

Applicant,

v.

KEVIN MILYARD, and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

ORDER

This matter arises in connection with the **Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254** [Doc. # 11, filed 6/15/2007] (the “Application”) filed by Richard Martinez (the “petitioner”) and the respondents’ Answer [Doc. #20, filed 8/27/07].

The Application asserts five claims. The respondents argue that the petitioner did not present claims one and two as federal issues in his direct appeal to the state courts. *Answer*, pp. 7-9. The respondents do not provide a copy of the petitioner’s opening and reply briefs to the state appellate court on direct appeal, however, nor do they provide a copy of the petitioner’s briefs to the state supreme court. Thus, it is impossible to determine whether the petitioner presented claims one and two as federal issues to the state courts.

The respondents also argue that the petitioner’s fifth claim was not presented to the state courts in his postconviction motion. Although the respondents provide a copy of the petitioner’s opening brief to the state appellate court, they do not provide a copy of the petitioner’s reply brief to the state appellate court, and they do not provide a copy of the petitioner’s briefs to the

state supreme court.

Finally, the respondents have cited extensively to trial transcripts in their Answer. The respondents do not provide copies of the cited transcripts. “The respondent must attach to the answer parts of the transcript that the respondent considers relevant.” *Rules Governing Section 2254 Cases in the United States District Courts*, Rule 4(c). Accordingly,

IT IS ORDERED that, on or before **May 22, 2009**, the respondents shall provide the Court with the complete record from the state trial court and all briefs and pleadings filed in the state supreme and appellate courts in the criminal prosecution and post-conviction proceedings that underlie the Application.

Dated April 22, 2009.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge