

November 20, 2009

UNITED STATES COURT OF APPEALS

Elisabeth A. Shumaker
Clerk of Court

FOR THE TENTH CIRCUIT

In re:

MICHAEL DOYLE,

Petitioner.

No. 09-1426

(D.C. No. 1:07-CV-01358-PAB-KMT)

(D. Colo.)

ORDERBefore **BRISCOE, TYMKOVICH, and HOLMES**, Circuit Judges.

Michael Doyle seeks a writ of mandamus ordering the district court to decide his pending 28 U.S.C. § 2254 habeas application. The application was filed in June 2007, and the case was at issue in September 2007. Thus, the case has now been pending for twenty-eight months since it was at issue. It has been five months since the magistrate judge issued a report and recommendation and Mr. Doyle filed his objections.

“We understand the tension between the court’s heavy case load and the need to hear and determine all cases in a timely manner. However, writs of habeas corpus are intended to afford a swift and imperative remedy in all cases of illegal restraint or confinement.” *Johnson v. Rogers*, 917 F.2d 1283, 1284 (10th Cir. 1990). While five months is not an inordinate delay, especially in light of the numerous motions Mr. Doyle has filed, we recognize that the case as a

whole has been pending for more than two years. *Cf. id.* at 1285 (holding impermissible a fourteen-month delay in deciding a habeas application due to docket congestion). Thus, we invite the district court to respond to the mandamus petition. Any response should be filed within sixty days of the date of this order. Mr. Doyle's motion to proceed in forma pauperis is GRANTED.

Entered for the Court,

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", followed by a horizontal flourish line.

ELISABETH A. SHUMAKER, Clerk