

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 08-cv-02253-BNB

RALPH WRIGHT,

Applicant,

v.

WARDEN ARELLANO, A.V.C.F., C.D.O.C., and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

APR 13 2009

GREGORY C. LANGHAM
CLERK

ORDER TO FILE AMENDED PRE-ANSWER RESPONSE

Applicant, Ralph Wright, is a prisoner in the custody of the Colorado Department of Corrections who currently is incarcerated at the Arkansas Valley Correctional Facility in Crowley, Colorado. Mr. Wright initiated this action by filing *pro se* an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging the validity of his conviction in El Paso County District Court case number 97CR2513. He has been granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915.

On November 11, 2008, I ordered Respondents to file within twenty days a pre-answer response limited to addressing the affirmative defenses of timeliness under 28 U.S.C. § 2244(d) and/or exhaustion of state court remedies under 28 U.S.C. § 2254(b)(1)(A). On December 5, 2008, Respondents filed their pre-answer response. Although given the opportunity to do so, Mr. Wright did not file a reply to the pre-answer response.

On February 6, 2009, I ordered Mr. Wright to file within thirty days an amended habeas corpus application because, upon closer review, the application failed to comply with Rule 8 of the Federal Rules of Civil Procedure. The February 6 order noted that Mr. Wright's claims were vague and conclusory because they were unsupported by specific factual assertions and left to Respondents and the Court the task of determining the basis for the claims. The February 6 order also noted that, as a result, the Respondents' December 5, 2008, pre-answer response attempted but was unable to respond to the basis for each asserted claim. On March 19, 2009, after being granted an extension of time, Mr. Wright submitted an amended habeas corpus application asserting only one claim and asking permission to file another habeas corpus application in the future in which he would assert two additional claims.

On March 23, 2009, I denied Mr. Wright's request to submit another habeas corpus application in the future, and gave Mr. Wright one final opportunity to file a second and final amended application in which he asserted all the claims he intended to raise in this action. On April 9, 2009, Mr. Wright submitted the second and final amended application.

Respondents now are directed to file an amended pre-answer response, limited to addressing the affirmative defenses of timeliness under 28 U.S.C. § 2244(d) and/or exhaustion of state court remedies under 28 U.S.C. § 2254(b)(1)(A), that replaces the pre-answer response originally filed on December 5, 2008. The amended pre-answer response should address the claims asserted in the second and final amended application filed on April 9, 2009. If Respondents do not intend to raise either of the affirmative defenses of timeliness or exhaustion of state court remedies, they must

notify the Court of that decision in the amended pre-answer response. Respondents may not file a dispositive motion as their amended pre-answer response, or an answer, or otherwise address the merits of the claims in response to this order.

In support of the amended pre-answer response, Respondents should attach as exhibits all relevant portions of the state court record, including but not limited to copies of all documents demonstrating whether this action is filed in a timely manner and/or whether Applicant has exhausted state court remedies.

Applicant may file a reply to the amended pre-answer response and provide any information that might be relevant to the one-year limitation period under 28 U.S.C. § 2244(d) and/or the exhaustion of state court remedies. Applicant also should include information relevant to equitable tolling, specifically as to whether he has pursued his claims diligently and whether some extraordinary circumstance prevented him from filing a timely 28 U.S.C. § 2254 action in this Court. Accordingly, it is

ORDERED that within twenty days from the date of this order Respondents shall file an amended pre-answer response that complies with this order. It is

FURTHER ORDERED that within twenty days of the filing of the amended pre-answer response Applicant may file a reply, if he desires. It is

FURTHER ORDERED that if Respondents do not intend to raise either of the affirmative defenses of timeliness or exhaustion of state court remedies, they must notify the Court of that decision in the amended pre-answer response.

DATED April 13, 2009, at Denver, Colorado.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 08-cv-02253-BNB

Ralph Wright
Prisoner No. 43140
Arkansas Valley Corr. Facility
PO Box 1000
Crowley, CO 81034

Warden Arellano
c/o Cathie Holst
Colorado Department of Corrections
Office of Legal Affairs
DELIVERED ELECTRONICALLY

Susan Eileen Friedman
Assistant Attorney General
Office of the Attorney General
DELIVERED ELECTRONICALLY

Paul Sanzo, Asst. Attorney General
Office of the Attorney General
DELIVERED ELECTRONICALLY
COURTESY COPY

I hereby certify that I have mailed a copy of the ORDER to the above-named individuals, and the following forms to Cathie Holst for service of process on Warden Arellano; and to Susan Friedman: AMENDED APPLICATION FOR WRIT OF HABEAS CORPUS FILED 4/09/09 on 4/13/09.

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk