

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-00068-BNB

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

RAYFEAL R. NUNN,

JUN 10 2009

Applicant,

GREGORY C. LANGHAM
CLERK

v.

HOYT BRILL (Warden of CCA), and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

ORDER TO SUPPLEMENT PRE-ANSWER RESPONSE

This matter is before the Court on the amended habeas corpus application filed by Applicant, the pre-answer response filed by Respondents, and the reply filed by Applicant. In the pre-answer response, Respondents assert the following:

On January 22, 2009, Mr. Nunn filed a motion for postconviction relief pursuant to 35(c)(3)(VI)(a), asserting the existence of newly discovered evidence (Appx. A: 52). The court denied the motion on February 18, 2009 (Appx. A: 52).

Pre-answer response at 5.

Respondents failed to allege whether Mr. Nunn appealed from the February 18, 2009, denial of the Colo. R. Crim. P. 35(c) motion. A review of appendix A attached to the pre-answer response reveals that Mr. Nunn apparently did appeal from the February 18 denial and that the appeal currently may be pending in the Colorado Court of Appeals. Therefore, Respondents are directed to supplement the pre-answer response with information as to the status of the appeal; whether the appeal was from the February 18, 2009, denial of the Colo. R. Crim. P. 35(c) motion; whether any of the

issues Mr. Nunn raised in the motion are the same or similar to the issues he raises in his habeas corpus application in this Court; and how the pending appeal may affect the instant action. Accordingly, it is

ORDERED that **within twenty days from the date of this order** Respondents shall file a supplemental pre-answer response that complies with this order.

DATED June 10, 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. 09-cv-00068-BNB

Rayfeal R. Nunn
Prisoner No. 92789
Kit Carson Corr. Center
PO Box 2000
Burlington, CO 80807

Christopher Y. Bosch
Assistant Attorney General
DELIVERED ELECTRONICALLY

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 6/10/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk