

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-00238-BNB

CLIFFORD N. WOODS,

Applicant,

v.

MIKE ARELLANO, Warden,

Respondent.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

APR 30 2009
GREGORY C. LANGHAM
CLERK

ORDER TO DISMISS IN PART AND TO
FILE PRELIMINARY RESPONSE IN PART

Applicant, Clifford N. Woods, is a prisoner in the custody of the Colorado Department of Corrections who currently is incarcerated at the Trinidad Correctional Facility in Trinidad, Colorado. Mr. Woods initiated this action by filing a *pro se* pleading titled, "Petition for Writ of Habeas Corpus Ad Prosequendum." Magistrate Judge Boyd N. Boland determined that the Petition was deficient and that Mr. Woods should submit his claims on a Court-approved form used in filing 28 U.S.C. § 2241 actions. Mr. Woods filed his claims on the form on March 5, 2009. Nonetheless, he included claims challenging both the validity of his sentence and the execution of his sentence. On March 23, 2009, Magistrate Judge Boland directed Mr. Woods to file an Amended Application and address only claims that challenged the execution of his sentence, which is the purpose of a § 2241 action. Mr. Woods filed an Amended Application on April 23, 2009. Although he again in the Amended Application includes claims, Claims

One and Two, that challenge the validity of his sentence and conviction, the Court will dismiss these claims and proceed with addressing the merits of only Claim Three.

As part of the preliminary consideration of the Application in this case and pursuant to *Keck v. Hartley*, 550 F. Supp. 2d 1272 (D. Colo. 2008), the Court has determined that a limited Preliminary Response is appropriate. Respondent is directed pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts to file a Preliminary Response limited to addressing the affirmative defenses of timeliness under 28 U.S.C. § 2244(d) and/or exhaustion of state court remedies. Rule 1(b) of the Section 2254 Rules applies the rules to 28 U.S.C. § 2241 habeas corpus actions.

If Respondent does not intend to raise either of these affirmative defenses, Respondent must notify the Court of that decision in the Preliminary Response. Respondent may not file a dispositive motion as a Preliminary Response, or an Answer, or otherwise address the merits of the claims in response to this Order. In support of the Preliminary Response, Respondent 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 reply to the Preliminary 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. § 2241 action in this Court. Accordingly, it is

ORDERED that Claims One and Two are dismissed without prejudice. It is

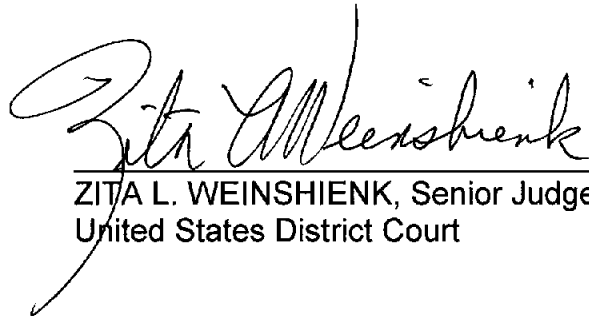
FURTHER ORDERED that **within twenty days from the date of this Order** Respondent shall file a Preliminary Response that complies with this Order. It is

FURTHER ORDERED that **within twenty days of the filing of the Preliminary Response** Applicant may file a Reply, if he desires. It is

FURTHER ORDERED that if Respondent does not intend to raise either of the affirmative defenses of timeliness or exhaustion of state court remedies, Respondent must notify the Court of that decision in the Preliminary Response.

DATED at Denver, Colorado, this 30 day of April, 2009.

BY THE COURT:



ZITA L. WEINSHIENK, Senior Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 09-cv-00238-BNB

Clifford N. Woods
Prisoner No. 81438
Trinidad Correctional Facility
PO Box 2000
Trinidad, CO 81082

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

John Suthers, 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 Mike Arellano; and to John Suthers: AMENDED APPLICATION FOR WRIT OF HABEAS CORPUS FILED 4/23/09 on 4/30/09.

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk