

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01090-BNB

DONALD R. GONZALES,

Applicant,

v.

WARDEN HARTLEY, and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

JUL 30 2009

GREGORY C. LANGHAM
CLERK

ORDER TO SUPPLEMENT PRE-ANSWER RESPONSE

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

While his appeal was pending, Mr. Gonzales filed the following motions: a Crim. P. 35(c) postconviction motion which the district court denied on May 4, 2007 (Appx. A: 16); a motion for rehearing concerning his Crim. P. 35(c) postconviction motion, which the district court denied on May 29, 2007, finding that jurisdiction rested with the CCA (Appx. A: 17); a motion to correct illegal sentence, which the district court denied on August 2, 2007 (Appx. A: 18); and a Crim. P. 35(a) motion for postconviction relief. On April 2, 2008, the district court ruled that because the case was on appeal to the CCA, it did not have jurisdiction to consider his Crim. P. 35(a) motion. (Appx. A: 18).

Pre-answer response at 3.

Respondents failed to allege whether Mr. Gonzales appealed from the district court's denial of, or rulings regarding, any of the motions. In short, the Court requests

an update on the status of any appeals pertinent to these motions. In addition, in his supplemental reply filed on July 17, 2009, Mr. Gonzales refers to a habeas corpus petition he filed in state court. The Court also requests further information on that state petition, including but not limited to whether any of the issues Mr. Gonzales raised in the petition are the same or similar to the issues he raises in the habeas corpus application he filed in this Court, and how the pending state petition may affect this 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 July 30, 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-01090-BNB

Donald R. Gonzales
Prisoner No. 58418
Fremont Corr. Facility
P.O. Box 999
Cañon City, CO 81215-0999

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 7/30/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk