

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01174-BNB

STEVEN MARK ST. JAMES,

Applicant,

v.

ARISTEDES W. ZAVARAS, and
JOHN W. SUTHERS, The Attorney General of the State of Colorado,

Respondents.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

OCT 26 2009

GREGORY C. LANGHAM
CLERK

ORDER TO AMEND

Applicant, Steven Mark St. James, is a prisoner in the custody of the Colorado Department of Corrections and currently is incarcerated at the Fort Lyon, Colorado, Correctional Facility. Mr. St. James, acting *pro se*, initiated this action by filing an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 challenging the validity of his conviction in the Arapahoe County District Court in Case No. 1997CR3425. In an order entered on September 15, 2009, Magistrate Judge Boyd N. Boland directed Mr. St. James to show cause why the Application should not be denied as a mixed petition for failure to exhaust state court remedies in Claims One through Three. On October 13, 2009, Mr. St. James filed a Response to the Order to Show Cause.

The Court must construe liberally Mr. St. James' Response because he is not represented by an attorney. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). However, the Court should not act

as an advocate for a *pro se* litigant. *See Hall*, 935 F.2d at 1110. For the reasons stated below, the Court will direct Mr. St. James to file an Amended Application.

Upon review of the October 13, 2009, Response, the Court finds that Mr. St. James fails to assert with any specificity why the Application should not be denied. Mr. St. James, however, asserts that if the Court is unwilling to accept his claims as unexhausted then he requests that the Court dismiss the following claims: (1) whether the trial court erred in deciding the statutory definition of "sexually exploitative" included undeveloped film and (2) whether or not the cumulative effect of errors at trial warrant reversal because the prosecution ignored the "position of trust" element, and allowed testimony regarding his previous acts of drug dealing or use and possession of large sums of money in violation of his due process rights. (Applicant's Resp. at 2.) Mr. St. James also requests that this Application be amended to include, "but not limited to the following" (1) whether the undeveloped film is a basis for a finding sexual exploitation of a child; (2) defendant's prior misconduct; and (3) prosecutorial misconduct. (Applicant's Resp. at 2.)

Mr. St. James' request either to dismiss or to add claims to his Application is unclear and fails to address all of the claims he asserted in the original Application. As for Mr. St. James' statement that his current Application be amended to include, but not limited to, the statement is vague and leaves open what claims Mr. St. James intends to raise in this action. Mr. St. James, therefore, will be instructed to file an Amended Application and state specifically all the exhausted claims he intends to proceed with in this action. Accordingly, it is

ORDERED that Mr. St. James file an Amended Application within **thirty days** from the date of this Order and state all the exhausted claims he intends to proceed with in this action. It is

FURTHER ORDERED that the Application will be denied and the action will be dismissed without further notice as a mixed petition if Mr. St. James fails to file an Amended Application within the time allowed.

DATED October 26, 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-01174-BNB

Steven Mark St. James
Reg No. 66258
Fort Lyon Corr. Facility
P.O. Box 1000
Fort Lyon, CO 81038-1000

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 10/26/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk