IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01267-BNB

DALE GROSS,

Applicant,

v.

DAVID MICHAUD, and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

ORDER TO FILE PRE-ANSWER RESPONSE

Applicant, Dale Gross, is a prisoner in the custody of the Colorado Department of Corrections who currently is incarcerated at the Sterling, Colorado, correctional facility. On August 13, 2009, he filed ***pro se*** a second amended Application for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254. He been granted leave to proceed ***in forma pauperis*** pursuant to 28 U.S.C. § 1915.

As part of the preliminary consideration of the second amended Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 filed in this action and pursuant to ***Denson v. Abbott***, 554 F. Supp. 2d 1206 (D. Colo. 2008), the Court has determined that a limited Pre-Answer Response is appropriate. Respondents are directed pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts to file 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). If Respondents do not intend to raise either of these

affirmative defenses, they must notify the Court of that decision in the Pre-Answer Response. Respondents may not file a dispositive motion as their Pre-Answer Response, or an Answer, or otherwise address the merits of the claims in response to this Order.

In support of the 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 reply to the 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 (20) days from the date of this Order** Respondents shall file a Pre-Answer Response that complies with this Order. It is

FURTHER ORDERED that **within twenty (20) days of the filing of the 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 mustnotify the Court of that decision in the Pre-Answer Response.

DATED August 17, 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-01267-BNB

Dale Gross
Prisoner No. 104225
Sterling Correctional Facility
PO Box 6000
Sterling, CO 80751

David Michaud - **CERTIFIED**
Colorado Mental Health Institute
1600 W. 24th St., Bldg. 54
Pueblo, CO 81003

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 David Michaud and to John Suthers: AMENDED APPLICATION FOR WRIT OF HABEAS CORPUS FILED 8/13/09 on 8/17/09.

GREGORY C. LANGHAM, CLERK

By: _____
Deputy Clerk