

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01310-BNB

PATRICK DURAY PORTLEY-EL,

Applicant,

v.

WARDEN HOYT BRILL (KCCC), and  
CORRECTION CORPORATION OF AMERICA,

Respondents.

FILED  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

SEP 09 2009

GREGORY C. LANGHAM  
CLERK

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ORDER FOR AMENDED APPLICATION

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Applicant, Patrick Duray Portley-El, is a prisoner in the custody of the Colorado Department of Corrections who currently is incarcerated at the Kit Carson Correctional Center in Burlington, Colorado. Mr. Portley-El initiated this action by filing *pro se* an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging the validity of his convictions and sentences in Arapahoe County District Court case numbers 88CR1555, 88CR430, and 89CR734; Denver District Court case number 89CR184; and Adams County District Court case number 89CR237. He has paid the \$5.00 habeas corpus filing fee.

On June 25, 2009, Magistrate Judge Boyd N. Boland ordered Respondents to file within twenty days 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 under 28 U.S.C. § 2254(b)(1)(A). On August 11, 2009, after being granted an extension of time, Respondents filed their preliminary response. In the preliminary

response, Respondents note that Mr. Portley-El has filed a second habeas corpus action, *see Portley-El v. Warden Hoyt Brill*, No. 09-cv-01309-BNB (D. Colo. filed June 4, 2009), in which he also attacks his convictions and sentences in Arapahoe County District Court Case Nos. 88CR1555 and 89CR430. On August 27, 2009, Mr. Portley-El filed his reply to the pre-answer response.

The Court must construe liberally Mr. Portley-El's filings 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 be an advocate for a *pro se* litigant. *See Hall*, 935 F.2d at 1110. For the reasons stated below, Mr. Portley-El will be directed to file an amended application.

The Court notes that Mr. Portley-El's application attacks multiple convictions from different state courts. As a result, the instant habeas corpus application is not in compliance with Rule 2(e) of the Rules Governing Section 2254 Cases in the United States District Court (Section 2254 Rules), which provides that an applicant who seeks relief from judgments of more than one state court must file a separate application covering the judgment or judgments of each court. Therefore, Mr. Portley-El will be given the opportunity to file an amended application that complies with Rule 2(e) of the Section 2254 Rules. The amended application he files must designate which conviction or convictions, if they are from the same state court, he wishes to pursue in the instant action. He may pursue challenges to the remainder of his convictions in separate applications filed in separate actions, if he so chooses.

For example, if Mr. Portley-EI wishes to challenge his convictions in Arapahoe County District Court case numbers 88CR1555, 88CR430, and 89CR734, he must designate Nos. 88CR1555, 88CR430, and 89CR734 in the amended application as the state convictions he is challenging in the instant action. If, instead, Mr. Portley-EI wishes to challenge his conviction in Denver District Court case number 89CR184, he must designate No. 89CR184 in the amended application as the state conviction he is challenging in the instant action. Lastly, if Mr. Portley-EI wishes to challenge his conviction in Adams County District Court case number 89CR237, he must designate No. 89CR237 in the amended application as the state conviction he is challenging in the instant action. Accordingly, it is

ORDERED that Applicant, Patrick Duray Portley-EI, file **within thirty (30) days from the date of this order** an amended application that complies with Rule 2(e) of the Rules Governing Section 2254 Cases in the United States District Court Section 2254 Rules and with the directives of this order. It is

FURTHER ORDERED that the amended application he files must designate which conviction or convictions, if they are from the same state court, he wishes to pursue in the instant action. It is

FURTHER ORDERED that the clerk of the court mail to Mr. Portley-EI, together with a copy of this order, two copies of the following form to be used in filing the amended application: Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254. It is

FURTHER ORDERED that if Mr. Portley-El fails to comply with this order within the time allowed, the habeas corpus application will be denied and the action dismissed without prejudice.

FURTHER ORDERED that the petitions to strike the pre-answer response (docket no. 9) and for entry of a default judgment (docket nos. 10 and 14) that Applicant filed on August 27, 2009, are denied.

DATED September 9, 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-01310-BNB

Patrick Duray Portley-EI  
Prisoner No. 62950  
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** and **two copies of the Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254** to the above-named individuals on 9/9/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk