

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01751-BNB

ANTWAN C. MAYS,

Applicant,

v.

TARVIS TRANI, Warden, L.C.F.,

Respondent.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

OCT 02 2009

GREGORY C. LANGHAM
CLERK

ORDER TO SUPPLEMENT PRELIMINARY RESPONSE

Applicant, Antwan C. Mays, is a prisoner in the custody of the Colorado Department of Corrections at the Limon Correctional Facility in Limon, Colorado. Mr. Mays has filed *pro se* an application for writ of habeas corpus pursuant to 28 U.S.C. § 2241 challenging the execution of his prison sentence.

As part of the preliminary consideration of the habeas corpus application, the court determined that a limited Preliminary Response was appropriate. Therefore, on August 4, 2009, Respondent was 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. On August 21, 2009, Respondent filed a Preliminary Response arguing that Mr. Mays has failed to exhaust state remedies. On September 16, 2009, Mr. Mays filed a reply to the Preliminary Response.

The court has reviewed Respondent's Preliminary Response and has determined that a supplement to the Preliminary Response is required. Although

Respondent was directed to submit with the Preliminary Response any relevant state court documents to support the defenses of timeliness and failure to exhaust, Respondent has failed to submit as exhibits all relevant portions of the state court record, including but not limited to, copies of all documents demonstrating whether Applicant has exhausted state court remedies. In particular, it is not clear whether the Rule 35(c) motion Mr. Mays allegedly filed remains pending in the trial court or whether the trial court entered an order denying that motion. Without documentation to support Respondent's position that Mr. Mays should have appealed to the Colorado Court of Appeals, the court is unable to determine definitively whether Applicant has exhausted state remedies or whether an adequate state remedy exists.

Therefore, Respondent will be directed to file a supplement to the Preliminary Response and to provide the requested documentation as discussed in this order. Accordingly, it is

ORDERED that within twenty days from the date of this order Respondent shall file a supplement to the Preliminary Response that complies with this order.

DATED October 2, 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. 096-cv-01751-BNB

Antwan C. Mays
Prisoner No. 85028
Limon Correctional Facility
49030 State Hwy. 71
Limon, CO 80826

Christopher W. Alber
Assistant Attorney General
DELIVERED ELECTRONICALLY

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 10/2/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk