

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01943-BNB

MIGUEL TRIMBLE,

Applicant,

v.

TRAVIS TRANI, and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

OCT 23 2009

GREGORY C. LANGHAM
CLERK

ORDER FOR RESPONDENTS TO FILE
SUPPLEMENT TO PRE-ANSWER RESPONSE

As part of the preliminary consideration of the Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 in this case, the Court directed Respondents 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). On September 15, 2009, Respondents filed a Pre-Answer Response, in which they raised a procedural default issue with respect to Claim Four in the Application, but they declined to address the issue at this time.

The state bears the initial burden of pleading a procedural bar as an affirmative defense. *Hooks v. Ward*, 184 F.3d 1206 (10th Cir. 1999). Otherwise, the affirmative defense of a procedural bar is considered waived. Respondents will be directed to supplement the Pre-Answer, with respect to Claim Four, and address any procedural default arguments they may seek to raise. Otherwise, an affirmative defense with respect to a procedural bar of any of the allegations in Claim Four may be waived. Accordingly, it is

ORDERED that **within twenty days from the date of this Order** Respondents shall file a Supplement to the Pre-Answer Response that complies with this Order. It is

FURTHER ORDERED that **within twenty days of the filing of the Supplement** Applicant may file a Supplemental Reply, if he desires. It is

FURTHER ORDERED that if Respondents do not intend to raise the affirmative defense of procedural default with respect to Claim Four, they must notify the Court of that decision within twenty days of the date of this Order.

DATED October 23, 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-01943-BNB

Miguel Trimble
Prisoner No. 111124
Limon Correctional Facility
49030 State Hwy. 71
Limon, CO 80826

Roger G. Billotte
Assistant Attorney General
DELIVERED ELECTRONICALLY

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 10/23/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk