

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-02153-BNB

JEREMY NECHOL DENISON,
Applicant,

v.

PAM PLOUGHE, and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,
Respondents.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

DEC 11 2009

GREGORY C. LANGHAM
CLERK

ORDER

This matter is before the court on Respondents' Motion for Leave to File Motion to Dismiss filed on December 9, 2009. On December 7, 2009, the court ordered 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). Respondents were directed not to file a dispositive motion as their Pre-Answer Response, or an Answer, or otherwise address the merits of the claims in response to the court's December 7 order.

In the Motion for Leave to File Motion to Dismiss, Respondents seek leave to file a motion to dismiss limited to addressing the affirmative defense of timeliness. Respondents allege that this action clearly is time-barred and that, because the Attorney General's file from Applicant's direct appeal has been purged as part of routine file management, obtaining copies of the documents necessary to address exhaustion of state remedies would be an expensive endeavor. In support of their argument that this action clearly is time-barred, Respondents have submitted a copy of the state court

docket sheet for Applicant's criminal case that indicates more than five years passed after Applicant's conviction was affirmed on direct appeal before he filed any postconviction motions.

Under these unique and unusual circumstances, the Court agrees that Respondents should be allowed to file a motion to dismiss limited to addressing the affirmative defense of timeliness. Accordingly, it is

ORDERED that Respondents' Motion for Leave to File Motion to Dismiss filed on December 9, 2009, is granted. It is

FURTHER ORDERED that Respondents shall file their motion to dismiss **within twenty-one (21) days from the date of this Order**. It is

FURTHER ORDERED that Applicant may file a response **within twenty-one (21) days after the motion to dismiss** is filed.

DATED December 11, 2009, at Denver, Colorado.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge

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CERTIFICATE OF MAILING

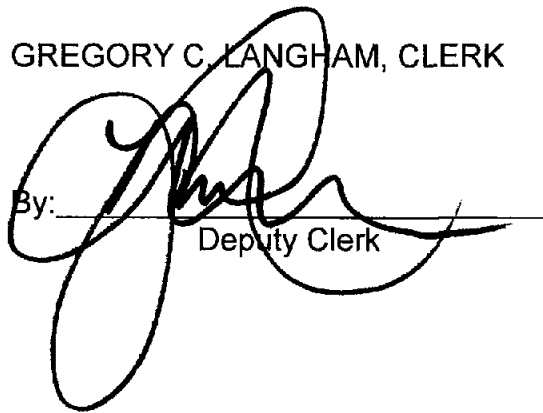
Civil Action No. 09-cv-02153-BNB

Jeremy Nechol Denison
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Colorado Territorial Corr. Facility
P.O. Box 1010
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Jennifer A. Berman
Assistant Attorney General
DELIVERED ELECTRONICALLY

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 12/11/09

GREGORY C. LANGHAM, CLERK

By: 
Deputy Clerk