

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-02393-BNB

DOUGLAS EUGENE WILSON,

Applicant,

v.

KEVIN MILYARD, SCF Warden, and
SUTHERS, Attorney General of the State of Colorado,

Respondents.

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

JAN 13 2010

GREGORY C. LANGHAM
CLERK

ORDER OF DISMISSAL

Applicant Douglas Eugene Wilson is a prisoner in the custody of the Colorado Department of Corrections at the Sterling Correctional Facility in Sterling, Colorado. Mr. Wilson 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 conviction in El Paso County District Court case number 01CR3593.

In an order filed on October 14, 2009, Magistrate Judge Boyd N. Boland directed Respondents to file a Pre-Answer Response limited to addressing the affirmative defenses of timeliness under 28 U.S.C. § 2244(d) and exhaustion of state court remedies under 28 U.S.C. § 2254(b)(1)(A) if Respondents intend to raise either or both of those affirmative defenses in this action. On November 30, 2009, Respondents filed their Pre-Answer Response arguing that this action should be dismissed as a mixed petition to allow Mr. Wilson to conclude his ongoing state court postconviction proceedings. On December 28, 2009, Mr. Wilson filed a "Motion to Withdraw Petition

for Writ of Habeas Corpus Pursuant to Title 28 U.S.C. § 2254.” Mr. Wilson states in the motion to withdraw filed on December 28 that the instant action is premature because his state court postconviction appeal remains pending in the Colorado Court of Appeals. The motion to withdraw will be granted and the instant action will be dismissed without prejudice. Accordingly, it is

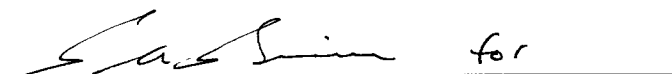
ORDERED that “Motion to Withdraw Petition for Writ of Habeas Corpus Pursuant to Title 28 U.S.C. § 2254” filed on December 28, 2009, is granted. It is

FURTHER ORDERED that the habeas corpus application is denied and the action is dismissed without prejudice. It is

FURTHER ORDERED that the “Motion in Request to Amend Claims as Set Forth in Petition for Writ of Habeas Corpus Pursuant to Title 28 U.S.C. § 2254” filed on November 16, 2009, is denied as moot.

DATED at Denver, Colorado, this 13th day of January, 2010.

BY THE COURT:



PHILIP A. BRIMMER
United States District Judge, for
ZITA LEESON WEINSHIENK, Senior Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 09-cv-02393-BNB

Douglas Eugene Wilson
Prisoner No. 124554
Sterling Correctional Facility
PO Box 6000 - Unite 7-C 1-6
Sterling, CO 80751

John J. Fuerst III
Senior Assistant Attorney General
DELIVERED ELECTRONICALLY

I hereby certify that I have mailed a copy of the **ORDER AND JUDGMENT** to the above-named individuals on 1/13/10

GREGORY C. LANGHAM, CLERK

By:  _____
Deputy Clerk