

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-02698-ZLW

JOSHUA D. MOORE,

Applicant,

v.

ANGEL MEDINA, Warden, L.C.F.,

Respondent.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

FEB 19 2010

GREGORY C. LANGHAM
CLERK

ORDER

This matter is before the Court on Applicant's "Motion to Amend/Alter Order of Judgment and Dismissal," filed on January 29, 2010. Applicant, Joshua Moore, is a prisoner in the custody of the Colorado Department of Corrections who currently is incarcerated at the Limon Correctional Facility. He initiated this acting by filing a *pro se* Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241.

On November 19, 2009, Magistrate Judge Boyd N. Boland ordered Respondent to file a preliminary response to the habeas corpus application and address the affirmative defenses of timeliness and exhaustion of state court remedies. On December 4, 2009, Respondent filed a preliminary response. Mr. Moore did not file a reply. On January 21, 2010, the Court entered an Order dismissing the application for failure to exhaust state court remedies. Specifically, the Court found that Mr. Moore had presented his claims to the Lincoln County District Court and the Colorado Court of Appeals (CCA), but failed to obtain judicial review of the CCA's decision by the Colorado Supreme Court.

Mr. Moore then filed the instant “Motion to Amend/Alter Order of Judgment and Dismissal.” The Court must construe the pleading liberally because Mr. Moore is a *pro se* litigant. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). A litigant subject to an adverse judgment, and who seeks reconsideration by the district court of that adverse judgment, may “file either a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59(e) or a motion seeking relief from the judgment pursuant to Fed. R. Civ. P. 60(b).” *Van Skiver v. United States*, 952 F.2d 1241, 1243 (10th Cir. 1991). Mr. Moore filed the Motion to Reconsider within twenty-eight days after the Order of Dismissal and the Judgment was entered in the instant action. The Court, therefore, finds that the Motion is filed pursuant to Rule 59(e). *See* Fed. R. Civ. P. 59(e).


In the Motion to Reconsider, Mr. Moore raises two arguments. First, he alleges that the Colorado Attorney General failed to serve him with the preliminary response, which prevented him from filing a reply to the arguments raised therein. Second, he alleges that Colorado Appellate Rule 51.1 should apply to his claims, such that he is not required to present his claims to the Colorado Supreme Court in order for the claims to be considered exhausted. The Court finds that further briefing is required on these issues. Therefore, Respondent will be ordered to file a Response to the “Motion to Amend/Alter Order of Judgment and Dismissal,” filed on January 29, 2010, and address the two issues set forth above. Accordingly, it is

ORDERED that **within twenty-one (21) days from the date of this Order** Respondent shall file a Response that complies with this Order. It is

FURTHER ORDERED that **within twenty-one (21) days of the filing of the Response** Applicant may file a Reply, if he desires.

DATED at Denver, Colorado, this 18 day of February, 2010.

BY THE COURT:


CHRISTINE M. ARGUELLO
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-02698-ZLW

Joshua D. Moore
Prisoner No. 91246
Limon Correctional Facility
49030 State Hwy. 71
Limon, CO 80826

Jennifer S. Huss
Assistant Attorney General
DELIVERED ELECTRONICALLY

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 2/19/10

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk