

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-00598-BNB

OLOYEA D. WALLIN,

Applicant,

v.

KEVIN P. ESTEP,¹ and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

JUL 12 2010

GREGORY C. LANGHAM
CLERK

ORDER

In response to the Court's Order to File Pre-Answer Response, Respondents have filed a Pre-Answer Response and Applicant has filed a Reply. Upon review of the Response and the Reply, the Court finds that the disposition of the Colo. R. Crim. P. 35(c) postconviction motion filed on December 10, 2001, is at issue. Although the Colorado Court of Appeals asserts in an order entered on August 16, 2007, that the postconviction motion was disposed of in return for Applicant receiving a sentence modification under Colo. R. Crim. P. 35(b) (**See** Pre-Answer Resp., Ex. C at 3), nothing in the Lexis/Nexis Docket Sheet (**See** Pre-Answer Resp., Ex A at 19) confirms such a finding. Furthermore, previously in *Wallin v. Abbott*, No. 08-cv-01650-ZLW (D. Colo. Feb. 13, 2009), Respondents conceded that the application was timely under 28 U.S.C. § 2244(d) with respect to the same criminal case that is at issue in this case. Now, even though it appears Applicant has had collateral proceedings pending in state court

¹ Respondents note in the Pre-Answer Response that Kevin P. Estep is the Warden of the Cheyenne Mountain Re-Entry Center where Applicant currently is incarcerated.

from February 13, 2009, until at least March 25, 2010, Respondents argue that this Application is time-barred.

Respondents, therefore, will be directed to file a Supplement to the Pre-Answer Response further addressing both the disparity in their argument regarding timeliness and the disposition of the December 10 postconviction motion. Respondents are instructed to submit copies of relevant state court records that may identify the findings of the state trial court with respect to the disposition of the December 10 postconviction motion. Specifically, Respondents are instructed to address the minute order entered by the trial court on February 6, 2002, as it relates to the disposition of the December 10 postconviction motion. Accordingly, it is

ORDERED that within twenty-one days from the date of this Order Respondents shall submit a Supplemental Response as set forth above. It is

FURTHER ORDERED that Mr. Wallin shall have twenty-one days from the date Respondents file a Supplemental Response to file a Supplemental Reply. It is

FURTHER ORDERED that the Clerk of the Court shall substitute Kevin P. Estep for Pam Ploughe as named Respondent.

Dated: July 9, 2010

BY THE COURT:

s/Craig B. Shaffer

CRAIG B. SHAFFER
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 10-cv-00598-BNB

Oloyea D. Wallin
Prisoner No. 111389
CMRC
2925 East Las Vegas Street
Colorado Springs, CO 80906

Paul Koehler
First Assistant Attorney General
DELIVERED ELECTRONICALLY

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 7/12/10

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk