

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-00975-BNB

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

RODRICK D. MADISON,

AUG 19 2010

Applicant,

GREGORY C. LANGHAM
CLERK

v.

BRIGHAM SLOAN, Warden, BCCF, Exec. Director CDOC, and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

ORDER TO SUPPLEMENT PRE-ANSWER RESPONSE

Applicant, Rodrick Madison, is a prisoner in the custody of the Colorado Department of Corrections and is currently incarcerated at the Bent County Correctional Facility in Las Animas, Colorado. Mr. Madison initiated this action by filing a *pro se* Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 on April 29, 2010. Mr. Madison filed an amended § 2254 Application on June 9, 2010.

As part of the preliminary consideration of the amended Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 in this case, the Court determined that a limited pre-answer response was appropriate. Therefore, on June 11, 2010, Respondents were directed, pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts and pursuant to *Denson v. Abbott*, 554 F. Supp. 2d 1206 (D. Colo. 2008), 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). After receiving an extension of time,

Respondents submitted their pre-answer response on July 14, 2010. Applicant has not filed a reply within the time provided.

The Court has reviewed the Pre-Answer Response and has determined that a supplement is required. Although Respondents were directed to submit with the Pre-Answer Response any relevant state court documents to support the defenses of timeliness and failure to exhaust, Respondents have failed to submit as exhibits all relevant portions of the state court record. Instead, Respondents have submitted a "Partial Colorado State Court Data Website Record" for each of Mr. Madison's five Arapahoe County District Court criminal cases that are the subject of the § 2254 Application.

Respondents assert that they are unable to address the defense of timeliness without expending funds to secure the trial court records and determine their contents. Respondents also argue that Mr. Madison has failed to exhaust his state court remedies because he did not appeal any of his convictions or the trial court's November 13, 2003 order denying his September 5, 2003 motion for reconsideration of sentence. However, there appears to be a question about whether Mr. Madison has a state post conviction motion pending in the trial court at this time. Mr. Madison apparently filed a motion and/or brief to correct illegal sentence (Rule 35(a) motion) in or around May 2008, and a follow up letter regarding the status of the motion in August 2008. The Court cannot determine definitively whether Mr. Madison's § 2254 Application should be dismissed without prejudice as unexhausted, or whether his claims are procedurally defaulted, without reviewing the contents of the state post conviction motions and any supporting briefs he filed in the Arapahoe County District Court. Therefore,

Respondents will be directed to file a supplement to the Pre-Answer Response and to provide the requested documentation as discussed in this order. Accordingly, it is

ORDERED that **on or before September 3, 2010** Respondents shall file a supplement to the pre-answer response that complies with this order.

DATED August 19, 2010, 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. 10-cv-00975-BNB

Rodrick D. Madison
Prisoner No. 82798
Bent County Correctional Facility
11560 Road FF.75
Las Animas, CO 81054-9573

John D. Seidel
Assistant Attorney General
DELIVERED ELECTRONICALLY

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 8/19/10

GREGORY S. LANGHAM, CLERK

By: 

Deputy Clerk