

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-01061-BNB

CALVIN LA BERRY POWELL,

Applicant,

v.

WARDEN BRIGHAM SLOAN, Bent County Correctional Facility, and
JOHN W. SUTHERS, The Attorney General of the State of Colorado,

Respondents.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

JUL 27 2010

GREGORY C. LANGHAM
CLERK

ORDER TO SUPPLEMENT PRE-ANSWER RESPONSE

Applicant, Calvin La Berry Powell, is a prisoner in the custody of the Colorado Department of Corrections and is currently incarcerated at the Bent County Correctional Center in Las Animas, Colorado. Mr. Powell initiated this action by filing a *pro se* Amended Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 on May 28, 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 15, 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). On June 24, 2010, Respondents submitted their pre-answer response. Applicant submitted a reply to the pre-answer response on July 19, 2010.

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. In particular, Respondents allege that the Application is time-barred pursuant to 28 U.S.C. § 2244(d)(1), because Applicant did not file any post-conviction motions between 2005 and the present. However, Respondents have not attached the State Court Register of Action for Adams County District Court Case No. 97-CR-689. Without documentation to support Respondents' argument, the Court is unable to determine definitively whether the Application is timely.

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 August 11, 2010**, Respondents shall file a supplement to the pre-answer response that complies with this order.

DATED July 27, 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-01061-BNB

Calvin La Berry Powell
Prisoner No. 63747
Bent County Correctional Facility
11560 Road FF.75
Las Animas, CO 81054-9573

Melissa D. Allen
Assistant Attorney General
DELIVERED ELECTRONICALLY

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 7/27/10

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk