

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-01643-BNB

SHANNON SMITH,

Applicant,

v.

GRAYSON ROBINSON, Sheriff of the County of Arapahoe, State of Colorado,

Respondent.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

AUG 17 2010

GREGORY C. LANGHAM
CLERK

ORDER TO FILE PRE-ANSWER RESPONSE

As part of the preliminary consideration of the Amended Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 filed on August 13, 2010, in this action and pursuant to *Denson v. Abbott*, 554 F. Supp. 2d 1206 (D. Colo. 2008), the Court has determined that a limited Pre-Answer Response is appropriate. Respondent is directed pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts 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). If Respondent does not intend to raise either of these affirmative defenses, Respondent must notify the Court of that decision in the Pre-Answer Response. Respondent may not file a dispositive motion as the Pre-Answer Response, or an Answer, or otherwise address the merits of the claims in response to this Order.

In support of the Pre-Answer Response, Respondent should attach as exhibits all relevant portions of the state court record, including but not limited to copies of all documents demonstrating whether this action is filed in a timely manner and/or whether Applicant has exhausted state court remedies.

Applicant may reply to the Pre-Answer Response and provide any information that might be relevant to the one-year limitation period under 28 U.S.C. § 2244(d) and/or the exhaustion of state court remedies. Applicant also should include information relevant to equitable tolling, specifically as to whether he has pursued his claims diligently and whether some extraordinary circumstance prevented him from filing a timely 28 U.S.C. § 2254 action in this Court. Accordingly, it is

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

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

FURTHER ORDERED that if Respondent does not intend to raise either of the affirmative defenses of timeliness or exhaustion of state court remedies, Respondent must notify the Court of that decision in the Pre-Answer Response.

DATED August 17, 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-01643-BNB

Gary D. Fielder
Attorney at Law
DELIVERED ELECTRONICALLY

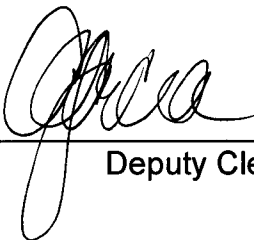
Grayson Robinson, Sheriff- **CERTIFIED***
Arapahoe County Sheriff's Department
13101 Broncos Parkway
Centennial, CO 80112

John Suthers, Attorney General
Office of the Attorney General
DELIVERED ELECTRONICALLY
COURTESY COPY

Paul Sanzo, Asst. Attorney General
Office of the Attorney General
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COURTESY COPY

I hereby certify that I have mailed a copy of the ORDER to the above-named individuals, and the following forms to Grayson Robinson and to John Suthers: AMENDED APPLICATION FOR WRIT OF HABEAS CORPUS FILED 8/13/10 on 8/17/10.

GREGORY C. LANGHAM, CLERK

By: 
Deputy Clerk