

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-02250-BNB

TROY ALLEN SHORT,

Applicant,

v.

TRAVIS TRANNI, and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

OCT 26 2010

GREGORY C. LANGHAM
CLERK

AMENDED ORDER TO FILE PRE-ANSWER RESPONSE

As part of the preliminary consideration of the Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 filed on September 15, 2010, and the Motion to Amend filed on October 22, 2010, the Court has determined that a limited Pre-Answer Response is appropriate. The Motion to Amend, which supplements with additional allegations the claims asserted by Applicant in the habeas corpus application will be granted. The Court's October 20, 2010, Order to File Pre-Answer Response will be vacated and replaced by this Order.

Respondents are directed pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts and 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). If Respondents do not intend to raise either of these affirmative defenses, they must notify the Court of that decision in the

Pre-Answer Response. Respondents may not file a dispositive motion as their 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, Respondents 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 the Motion to Amend that Applicant filed on October 22, 2010, is granted. It is

FURTHER ORDERED that the Court's October 20, 2010, Order to File Pre-Answer Response is vacated and replaced by the instant Order. It is

FURTHER ORDERED that **within twenty-one days from the date of this Order** Respondents shall file a Pre-Answer Response that complies with this Order. It is

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

FURTHER ORDERED that if Respondents do not intend to raise either of the

affirmative defenses of timeliness or exhaustion of state court remedies, they must notify the Court of that decision in the Pre-Answer Response. It is

FURTHER ORDERED that the Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action filed on September 2, 2010, is denied as moot because Applicant paid the \$5.00 filing fee on October 7, 2010. It is

FURTHER ORDERED that the motions for appointment of counsel filed on September 15 and 30, 2010, are denied as premature.

DATED October 26, 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-02250-BNB

Troy Allen Short
Prisoner No. 134487
CMC-FMCC
P.O. Box 300
Cañon City, CO 81215-0300

Travis Tranni, Warden
c/o Keith Nordell
Colorado Department of Corrections
Office of Legal Affairs
DELIVERED ELECTRONICALLY

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

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

I hereby certify that I have mailed a copy of the AMENDED ORDER to the above-named individuals, and the following forms to Keith Nordell for service of process Travis Tranni; and to John Suthers: APPLICATION FOR WRIT OF HABEAS CORPUS FILED 9/15/10 and MOTION TO AMEND PETITION FOR WRIT OF HABEAS CORPUS AT GROUND A AND GROUND B FILED 10/22/10 on 10/26/10.

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk