

**FILED**  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

MAY 02 2011

GREGORY C. LANGHAM  
CLERK

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-cv-00195-BNB

JASON C. GOODES,

Applicant,

v.

DAVID M. ZUPAN, Warden, FLCF, and  
JOHN SUTHERS, Attorney General of the State of Colorado,

Respondents.

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ORDER

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This matter is before the court on Respondents' Combined Motion for Leave to File Motion to Dismiss and Motion to Dismiss (Doc. #9) filed on April 29, 2011. On April 26, 2011, the court ordered Respondents 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). Respondents were directed not to file a dispositive motion as their Pre-Answer Response, or an Answer, or otherwise address the merits of the claims in response to the court's April 26 order.

In the Combined Motion for Leave to File Motion to Dismiss and Motion to Dismiss, Respondents seek leave to file a motion to dismiss limited to addressing the affirmative defense of timeliness. Respondents allege that this action clearly is time-barred and that, because the Attorney General's files from Applicant's direct appeal and the appeal of other postconviction motions have been destroyed as part of routine file

management, obtaining copies of the documents necessary to address exhaustion of state remedies would be an expensive endeavor.

Under these unusual circumstances, the Court agrees that Respondents should be allowed to file a motion to dismiss limited to addressing the affirmative defense of timeliness. Accordingly, it is

ORDERED that Respondents' Combined Motion for Leave to File Motion to Dismiss and Motion to Dismiss (Doc. #9) filed on April 29, 2011, is granted. It is

FURTHER ORDERED that Applicant may file a response to the Motion to Dismiss **within twenty-one (21) days** from the date of this order.

DATED at Denver, Colorado, this 2<sup>nd</sup> day of May, 2011.

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**

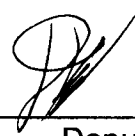
Civil Action No. 11-cv-00195-BNB

Jason C Goodes  
Prisoner No. 104492  
c/o Cyril and Susan Goodes  
5047 Cedar Way  
Elizabeth, CO 80107

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on May 2, 2011.

GREGORY C. LANGHAM, CLERK

By: \_\_\_\_\_



Deputy Clerk