

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-cv-01400-BNB

JOHN J. DAHMER,

Applicant,

v.

SUSAN JONES (Warden CCF), and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

SEP 14 2011

GREGORY C. LANGHAM
CLERK

AMENDED ORDER TO SUPPLEMENT PRE-ANSWER RESPONSE

Applicant, John J. Dahmer, is a prisoner in the custody of the Colorado Department of Corrections who currently is incarcerated at the Centennial Correctional Facility. Mr. Dahmer initiated this action by filing *pro se* on May 26, 2011, an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (ECF No. 1) challenging the validity of his Colorado conviction in Arapahoe County District Court Case No. 99CR2227. Mr. Dahmer has paid the \$5.00 filing fee in a habeas corpus action.

On June 10, 2011, Magistrate Judge Boyd N. Boland directed Respondents to file a pre-answer response limited to addressing the affirmative defenses of timeliness under 28 U.S.C. § 2244(d) and exhaustion of state court remedies under 28 U.S.C. § 2254(b)(1)(A). On June 23, 2011, Respondents submitted their pre-answer response. On July 15, 2011, Mr. Dahmer filed a reply to the pre-answer response.

The Court has reviewed the pre-answer response and the reply, and has determined that a supplement is required. Respondents argue in the pre-answer

response that the instant action is time-barred and that Mr. Dahmer's one asserted claim is exhausted. In his reply, Mr. Dahmer argues that the one-year limitation should be equitably tolled because, on February 22, 2006, in response to his postconviction motion pursuant to Rule 35(c) of the Colorado Rules of Criminal Procedure, the trial court ruled that he was entitled to appeal his sentence directly due to his counsel's failure to file a notice of appeal. On August 23, 2007, the Colorado Court on Appeals affirmed that decision, and on December 19, 2007, the Colorado Supreme Court denied certiorari review. Mr. Dahmer filed a post-conviction attack on April 28, 2008, which the trial court denied on June 14, 2010. On May 26, 2011, he submitted the instant habeas corpus application, which he appears to have signed on May 11, 2011.

Respondents are directed to supplement their time-bar argument within fifteen days from the date of this order in light of the holding in *Jimenez v. Quarterman*, 555 U.S. 113 (2009).

Accordingly, it is

ORDERED that within fifteen (15) days from the date of this order,

Respondents shall file a supplement to the pre-answer response that complies with this order.

DATED at Denver, Colorado, this 13th day of September, 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-01400-BNB

John J Dahmer
Prisoner No. 108153
Centennial Correctional Facility
PO Box 600
Cañon City, CO 81215

Patricia Rae Van Horn
Colorado Attorney General's Office
DELIVERED ELECTRONICALLY

I hereby certify that I have mailed a copy of the **AMENDED ORDER** to the above-named individuals on September 14, 2011.

GREGORY C. LANGHAM, CLERK

By:  _____
Deputy Clerk