

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-cv-03003-RBJ

BRUCE EDWARD PETERSON,

Applicant,

v.

RAE TIMME, and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

ORDER

At issue is Applicant's Motion for Dismissal filed pursuant to Fed. R. Civ. P. 56. Federal statutes do not address the standard for summary judgment in habeas proceedings. Thus, the Federal Rules of Civil Procedure apply. *See* Fed. R. Civ. P. 81(a)(4). Under this rule, summary judgment is necessary when the moving party shows the absence of a genuine dispute about a material fact and a party's entitlement to judgment as a matter of law. Fed. R. Civ. P. 56(a).

A summary judgment motion is properly asserted in a civil action in which the moving party contends the undisputed material facts entitle it to judgment as a matter of law. Rule 56(a). This is not an action in which summary judgment is properly sought. Applicant's Motion for Dismissal pursuant to Rule 56 has no basis in fact or law; rather than a motion, it is an attempt to present new evidence that Applicant apparently believes supports his habeas relief efforts.

Accordingly, it is

ORDERED that the Motion for Dismissal, ECF No. 29, is denied as improperly
filed. It is

FURTHER ORDERED that Applicant's request for status of the Motion for Dismissal, ECF No. 30, is denied as moot.

DATED this 26th day of July, 2012.

BY THE COURT:

A handwritten signature in black ink, appearing to read "R. Brooke Jackson", written in a cursive style. The signature is positioned above a horizontal line.

R. Brooke Jackson
United States District Judge