

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Senior District Judge Richard P. Matsch

Civil Action No. 12-cv-00354-RPM

KEITH FRAZIER,

Petitioner,

v.

TOM CLEMENTS, Exec. Director, Colorado Dept. of Corrections,  
MICHAEL MILLER, Warden, Crowley County Correctional Facility, and  
JOHN W. SUTHERS, Attorney General, State of Colorado,

Respondents.

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ORDER TO REPLY

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In the respondents' Answer to Application for Writ of Habeas Corpus [6] the respondents contend that Claims 3, 4 and 5(c) have not been exhausted in the state court proceedings and therefore this is a mixed petition. The applicant has not filed a reply to the answer. As the respondents correctly note, this Court has discretion in the petition to proceed to determine this application on the exhausted claims and deny the merits of the unexhausted claims or to dismiss the petition without prejudice to permit the applicant to return to the state court to proceed according to Rule 51.1(b).

The applicant has not filed a reply to the answer and, therefore, the Court is not informed with respect to the applicant's view of this choice. Accordingly, it is

ORDERED that the applicant will file a reply at least addressing the question of how to proceed with this mixed petition on or before July 2, 2012.

DATED: June 11<sup>th</sup>, 2012

BY THE COURT:

s/Richard P. Matsch

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Richard P. Matsch, Senior Judge