

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-02590-BNB

WILLIE T. HAYES,

Applicant,

v.

JAMES FALK, D.O.C., Sterling Correctional Facility, and
THE ATTORNEY GENERAL OF THE STATE OF [COLORADO] JOHN SUTHERS,

Respondents.

ORDER GRANTING MOTION

The amended habeas corpus application (ECF No. 12) filed by Applicant, Willie T. Hayes, on December 14, 2012, challenged what he termed his “illegal placement on sex offender parole,” *id.* at 2, and the Colorado Board of Parole’s failure to provide him with a pre-classification hearing. However, Mr. Hayes already is challenging his conviction and sentence in the habeas corpus application (ECF No. 1) he originally filed on September 28, 2012, and for which Respondents were ordered (ECF No. 9) to file a pre-answer response by December 21, 2012. Respondents filed their response (ECF No. 13) on December 17, 2012.

Because Mr. Hayes’ habeas corpus claims in the amended application are different from those raised in the original application in the sense that they did not challenge his conviction and sentence, I entered an order on December 17 (ECF No. 14), directing Mr. Hayes to inform the Court within fifteen days whether he intended to proceed with the claims already raised in the original application (ECF No. 1). I advised

Mr. Hayes that, if he did intend to proceed with the claims raised in the original application, he would not be allowed to amend the original application with unrelated claims, but rather may raise the claims asserted in the amended application (ECF No. 12) in a separate habeas corpus action, if he so desired.

On December 28, 2012, in response to the December 17 order, Mr. Hayes filed a motion titled “Motion to Dismiss Amended Complaint and for Extension of Time to Answer Pre[-]answer Response.” ECF No. 15. In the motion, Mr. Hayes asks to dismiss the amended application raising claims unrelated to the claims raised in the original application, and for an extension of time up to and including January 21, 2013, in which to file a reply to Respondents’ pre-answer response. *Id.* at 1. Although the December 28 motion does not clearly assert Mr. Hayes’ intention to pursue the claims raised in the original application and to abandon the claims raised in the amended application, this appears to be Mr. Hayes’ unarticulated goal.

Accordingly, it is

ORDERED that the motion titled “Motion to Dismiss Amended Complaint and for Extension of Time to Answer Pre[-]answer Response” (ECF No. 15) filed on December 28, 2012, is granted. It is

FURTHER ORDERED that Applicant, Willie T. Hayes, will be allowed **up to and including January 21, 2013**, in which to file a reply to Respondents’ pre-answer response filed on December 17, 2012. It is

FURTHER ORDERED the claims raised in the amended application, and the amended application itself (ECF No. 12), are deemed abandoned. The Court will not address the amended application further.

DATED January 4, 2013, at Denver, Colorado.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge