

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-02953-BNB

LEROY BUHL,

Applicant,

v.

D. BERKEBILE, Warden,

Respondent.

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ORDER TO FILE SUPPLEMENT TO PRELIMINARY RESPONSE

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As part of the preliminary consideration of the Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 filed on November 9, 2012, the Court ordered Respondent to file a Preliminary Response limited to addressing the affirmative defense of exhaustion of administrative remedies. On December 6, 2012, Respondent filed a Preliminary Response and on December 17, 2012, Applicant filed a reply to the Preliminary Response.

Respondent argues that the application should be dismissed for failure to exhaust administrative remedies because Applicant has not filed an administrative appeal from the prison disciplinary conviction he is challenging in the application. However, Respondent does not address Applicant's argument, raised initially in the application, that he cannot file an appeal without attaching a copy of the disciplinary hearing officer's report and that he has not received a copy of the disciplinary hearing officer's report. Therefore, Respondent will be directed to file a supplement to the Preliminary Response that addresses whether a prisoner can appeal a disciplinary

conviction without providing a copy of the disciplinary hearing officer's report. Respondent also should provide the Court with any documentary evidence that demonstrates whether Applicant was provided a copy of the disciplinary hearing officer's report. Accordingly, it is

ORDERED that **within twenty-one (21) days from the date of this Order** Respondent shall file a supplement to the Preliminary Response that complies with this Order. It is

FURTHER ORDERED that **within twenty-one (21) days of the filing of any supplement to the Preliminary Response** Applicant may file a Reply to the supplement, if he desires.

DATED December 27, 2012, at Denver, Colorado.

BY THE COURT:

s/ Boyd N. Boland  
United States Magistrate Judge