

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-03401-BNB

JOEY BUENO,

Applicant,

v.

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

Respondents.

ORDER

This matter is before the Court on Respondents' Motion for Leave to File Motion to Dismiss (Doc. No. 13) filed on January 24, 2014. On January 2, 2014, the Court ordered Respondents to file a Pre-Answer Response limited to addressing the affirmative defenses of timeliness under 28 U.S.C. § 2244(d) and/or exhaustion of state court remedies under 28 U.S.C. § 2254(b)(1)(A). Respondents were directed not to file a dispositive motion as their Pre-Answer Response, or an Answer, or otherwise address the merits of the claims in response to the Court's January 2 Order. On January 20, 2014, Respondents filed a Motion for Extension of Time to File Pre-Answer Response, which the Court granted (Doc. No. 12).

In the Motion for Leave to File Motion to Dismiss, Respondents seek leave to move for dismissal of the Application for a Writ of Habeas Corpus Pursuant to 28 U.C.S. § 2254 as untimely. Respondents allege that this action clearly is time-barred. In support, Respondents attached a copy of the state court docket sheets for Applicant's

criminal cases that indicate that Applicant's convictions became final almost twenty years ago. Respondents further assert that the Attorney General's files from Applicant's direct and postconviction appeals have been destroyed as part of routine file management, and that obtaining copies of the documents necessary to address exhaustion of state remedies would be unnecessarily expensive.

Under these unusual circumstances, the Court agrees that Respondents should be allowed to file a motion to dismiss limited to addressing the affirmative defense of timeliness. Applicant may respond to Respondents' Motion to Dismiss. See *Miller v. Marr*, 141 F.3d 976, 978 (10th Cir. 1998). Accordingly, it is

ORDERED that Respondents' Motion for Leave to File Motion to Dismiss (Doc. No. 13) filed on January 24, 2014, is granted. It is

FURTHER ORDERED that the Clerk of the Court is directed to accept for filing the Motion to Dismiss Habeas Application [Doc. # 14]. It is

FURTHER ORDERED that Applicant may file a Response to the Motion to Dismiss (Doc. No. 14) **within twenty-one days** from the date of this Order.

DATED January 29, 2014, at Denver, Colorado.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge