

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-00166-BNB

MICHAEL FRANCIS MAXSWEEN,

Applicant,

v.

MICHAEL MILLER, Superintendent, Crowley County Correctional Facility, and  
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

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ORDER TO FILE SUPPLEMENT TO PRE-ANSWER 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. § 2254 (ECF No. 4), 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. On June 13, 2014, Respondents filed a Pre-Answer Response (ECF No. 18) and on July 25, 2014, Applicant filed his Reply (ECF No. 21) to the Pre-Answer Response.

Respondents argue in the Pre-Answer Response that the Application is untimely under the one-year limitation period in 28 U.S.C. § 2244(d) and that all of Applicant's claims are unexhausted and procedurally defaulted. Applicant argues in the Reply that his habeas claims are not time-barred because he was not advised of his rights to appeal his sentence under Colo. R. Crim. P. 32(c) and therefore, his judgment is not yet final to commence the one-year limitation period under 28 U.S.C. § 2244(d)(1). Respondents have not had an opportunity to address this argument. Therefore, if

Respondents wish to respond to Applicant's argument, Respondents will be directed to file a supplement to the Pre-Answer Response that addresses this issue. Accordingly, it is

ORDERED that **within twenty-one (21) days from the date of this Order** Respondents shall file a supplement to the Pre-Answer Response that complies with this Order if Respondents wish to respond to Applicant's argument that his claims are not time-barred. 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 July 29, 2014, at Denver, Colorado.

BY THE COURT:

s/ Boyd N. Boland  
United States Magistrate Judge