

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-00371-BNB

LARRY GORDON,

Applicant,

v.

FRANCIS FAULK, Warden, Limon Correctional Facility, and  
THE ATTORNEY GENERAL OF THE STATE OF COLORADO JOHN SUTHERS,

Respondents.

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ORDER GRANTING AND DENYING IN PART MOTION FOR LEAVE AND  
DIRECTING RESPONDENTS TO FILE PRE-ANSWER RESPONSE

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This matter is before the Court on the “Motion for Leave to File Motion to Dismiss § 2554 [sic] Application” (ECF No. 14) filed by Respondents on March 18, 2014. In the motion for leave, Respondents request either leave to file a “Motion to Dismiss § 2254 Application as Untimely” (ECF No. 14, ex. 1) pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, or an extension of time of twenty-one days to file a pre-answer response in response to the Court’s order of March 10, 2014. See ECF Nos. 14 at 4, 10. Because the Attorney General’s appellate file in Applicant’s state conviction has been destroyed, Respondents also request leave to file the pre-answer response without appellate briefs and opinions as attachments, which will cost \$1.25 per page to photocopy at the State Archives.

The “Motion for Leave to File Motion to Dismiss § 2554 [sic] Application” will be granted in part and denied in part. To the extent Respondents seek to file the “Motion

to Dismiss § 2254 Application as Untimely” pursuant to Fed. R. Civ. P. 12(b)(6), the motion for leave will be denied. To the extent Respondents seek an extension of twenty-one days to file a pre-answer response to the Court’s order of March 10, 2014, the motion for leave will be granted. Respondents’ request for leave to file the pre-answer response without appellate briefs and opinions as attachments also will be granted at this time. Depending on the pre-answer response filed, the Court still may require Respondents to file the full record. Respondents will be directed to refile as attachments to the pre-answer response the relevant attachments to the “Motion to Dismiss § 2254 Application as Untimely” in a readable, 12-point font. See, e.g., ECF No. 14, ex. 2 at 2-9.

Applicant may reply to the pre-answer response and provide any information that might be relevant to the one-year limitation period under 28 U.S.C. § 2244(d) and/or the exhaustion of state court remedies. Applicant also should include information relevant to equitable tolling, specifically as to whether he has pursued his claims diligently and whether some extraordinary circumstance prevented him from filing a timely 28 U.S.C. § 2254 action in this Court.

Accordingly, it is

ORDERED that the “Motion for Leave to File Motion to Dismiss § 2554 [sic] Application” (ECF No. 14) is granted in part and denied in part. It is

FURTHER ORDERED that to the extent Respondents seek to file the “Motion to Dismiss § 2254 Application as Untimely” (ECF No. 14, ex. 1) pursuant to Fed. R. Civ. P. 12(b)(6), the motion for leave is denied. It is

FURTHER ORDERED that to the extent Respondents seek an extension of

twenty-one (21) days to file a pre-answer response to the Court's order of March 10, 2014, the motion for leave is granted. It is

FURTHER ORDERED that Respondents' request for leave to file the pre-answer response without appellate briefs and opinions as attachments is granted at this time. Depending on the pre-answer response filed, the Court still may require Respondents to file the full record. It is

FURTHER ORDERED that Respondents are directed to refile as part of the pre-answer response the relevant attachments to the "Motion to Dismiss § 2254 Application as Untimely" in a readable, 12-point font. It is

FURTHER ORDERED that within twenty-one (21) days of the filing of the pre-answer response Applicant may file a reply, if he desires.

DATED at Denver, Colorado, this 21st day of March, 2014.

BY THE COURT:

s/Craig B. Shaffer  
United States Magistrate Judge