

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-01672-BNB

RANDAL MARTY,

Applicant,

v.

T.K. COZZA-RHODES,

Respondent.

ORDER TO FILE PRELIMINARY RESPONSE

Applicant, Randal Marty, is a prisoner in the custody of the Federal Bureau of Prisons (BOP), who currently is incarcerated at the Federal Correctional Institution in Florence, Colorado. Pursuant to the July 9, 2014 Order, Applicant has filed *pro se* an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241. Applicant is challenging the BOP's calculation of his sentence. He specifically asserts that had the BOP credited him with the presentence confinement time he is entitled to he would have been released on or about March 9, 2014.

As part of the preliminary consideration of the Application in this case and pursuant to *Keck v. Hartley*, 550 F. Supp. 2d 1272 (D. Colo. 2008), the Court has determined that a limited Preliminary Response is appropriate. Respondent is directed pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts to file a Preliminary Response limited to addressing the affirmative defense of exhaustion of administrative remedies with respect to the execution of his

sentence. If Respondent does not intend to raise this affirmative defense, Respondent must notify the Court of that decision in the Preliminary Response. Respondent may not file a dispositive motion as a Preliminary Response, or an Answer, or otherwise address the merits of the claims in response to this Order.

In support of the Preliminary Response, Respondent should attach as exhibits all relevant portions of the administrative record, including but not limited to copies of all documents demonstrating whether Applicant has exhausted administrative remedies. Accordingly, it is

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

FURTHER ORDERED that **within twenty-one days of the filing of the Preliminary Response** Applicant may file a Reply, if he desires. It is

FURTHER ORDERED that if Respondent does not intend to raise the affirmative defense of exhaustion of administrative remedies, Respondent must notify the Court of that decision in the Preliminary Response. It is

FURTHER ORDERED that Applicant's Motion for Oral Argument, ECF No. 21, is denied as premature.

Dated: August 5, 2014

BY THE COURT:

s/Boyd N. Boland
United States Magistrate Judge