

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-02828-GPG

ANTHONY T. KINNEY,

Applicant,

v.

BRANDON SHAFFER, Chairman of Colorado Parole Board,
E. DIGGINS, Denver Sheriff, and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO

Respondents.

ORDER TO FILE SUPPLEMENT TO PRELIMINARY RESPONSE

As part of the preliminary consideration of the amended Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 (ECF No. 17) in this action, the Court ordered Respondents to file a Preliminary Response limited to addressing whether any of Applicant's claims are moot and the affirmative defenses of timeliness under 28 U.S.C. § 2244(d) and/or exhaustion of state court remedies. On December 4, 2014, Respondents filed a Preliminary Response (ECF No. 31) that addresses exhaustion of state court remedies. Respondents do not address in the Preliminary Response whether Applicant's claims are moot.

In the amended Application, Mr. Kinney claims that he was denied due process and equal protection in connection with a February 2012 Colorado "Full Board" parole board hearing and decision granting him "a marginal parole date" of September 30, 2013. As relief, he seeks a declaration that his parole start date is April 2012, instead of September 30, 2013. In light of Applicant's apparent release on parole in September

30, 2013, Respondents will be directed to file a supplement to the Preliminary Response that addresses whether Applicant's claims in the amended application are moot.

The Court also directs Respondents to address Mr. Kinney's claim that he is alleging an abuse of discretion by the parole board, which is not subject to judicial review in Colorado state courts, and thus, is not required to exhaust state court remedies pursuant to *Wildermuth v. Furlong*, 147 F.3d 1234, 1235 n.1 (10th Cir. 1998).

Accordingly, it is

ORDERED that **within twenty-one (21) days from the date of this Order** Respondents 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 the supplement to the Preliminary Response** Applicant may file a Reply to the supplement, if he desires.

DATED January 14, 2015, at Denver, Colorado.

BY THE COURT:

s/Gordon P. Gallagher
United States Magistrate Judge