

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:15-cv-00432-GPG

RICHARD THOMAS,

Applicant,

v.

BARRY GOODRICH, Warden, BCCF; and  
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

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ORDER TO FILE PRE-ANSWER RESPONSE

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Applicant, acting *pro se*, initiated this action by filing an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 challenging his conviction and sentence in Douglas County District Court Case No. 11cr145.

As part of the preliminary consideration of the Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 in this case, the Court has determined that a limited Pre-Answer Response is appropriate. Respondent The Attorney General of the State of Colorado is directed pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts and to *Denson v. Abbott*, 554 F.Supp. 2d 1206 (D. Colo. 2008), to file a Pre-Answer Response addressing the affirmative defenses of timeliness under 28 U.S.C. § 2244(d) and/or exhaustion/procedural default of state court remedies under 28 U.S.C. § 2254(b)(1)(A). If Respondent does not intend to raise either of these affirmative defenses, he must notify the Court of that decision in the Pre-Answer Response.

In support of the Pre-Answer Response, Respondent should attach as exhibits all relevant portions of the state court record, including but not limited to copies of all documents demonstrating whether this action is filed in a timely manner and/or whether

Applicant has exhausted state court remedies and whether the claims have been procedurally defaulted.

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 should include any 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, and any information relevant to overcoming a procedural default, such as cause and prejudice or the existence of a fundamental miscarriage of justice.

Accordingly, it is

ORDERED that **within twenty-one days from the date of this Order** Respondent The Attorney General of the State of Colorado shall file a Pre-Answer Response that complies with this Order and addresses exhaustion, timeliness, procedural default and jurisdictional issues. It is

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

FURTHER ORDERED that if Respondent The Attorney General of the State of Colorado does not intend to raise either of the affirmative defenses of timeliness or exhaustion/procedural default of state court remedies, he must notify the Court of that decision in the Pre-Answer Response.

Dated: March 12, 2015

BY THE COURT:

s/Gorgon P. Gallagher  
United States Magistrate Judge