

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-00934-GPG

PETER EDWARD DUNKER,

Applicant,

v.

DAVID ZUPAN, Warden CTCF,  
CYNTHIA COFFMAN, Attorney General of the State of Colorado,

Respondents.

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ORDER OF DISMISSAL

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Applicant, Peter Edward Dunker, is a prisoner in the custody of the Colorado Department of Corrections, currently incarcerated at the Colorado Territorial Correctional Facility in Canon City, Colorado. Mr. Dunker initiated this action by filing *pro se* an Application for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (ECF No. 1). On July 17, 2015, Mr. Dunker filed an Amended Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (ECF No. 6) (the "Amended Application"). Mr. Dunker is challenging the validity of his conviction in Denver District Court case number 09CR10123.

On August 24, 2015, Magistrate Judge Gordon P. Gallagher ordered Respondents to file a Pre-Answer Response limited to addressing the affirmative defenses of timeliness under 28 U.S.C. § 2244(d) and exhaustion of state court remedies pursuant to 28 U.S.C.

§ 2254(b)(1)(A) if Respondents intended to raise either or both of those defenses in this action. (ECF No. 11). On September 14, 2015, Respondents filed their Pre-Answer Response (ECF No. 15) arguing that claim five is defaulted, claim eight may be unexhausted, and the other claims are either unexhausted or defaulted. Mr. Dunker has not filed a reply to the Pre-Answer Response despite being given an opportunity to do so.

On October 27, 2015, Magistrate Judge Gallagher ordered Applicant to show cause in writing within thirty days why the amended application should not be dismissed because the claims are either procedurally barred and/or unexhausted. Applicant has failed to respond to the show-cause order within the time allowed. Therefore, for the reasons discussed in the October 27, 2015 show-cause order (ECF No. 16), Mr. Dunker's amended application will be dismissed because his claims are either procedurally barred or unexhausted.

The Court also certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith and therefore *in forma pauperis* status will be denied for the purpose of appeal. See *Coppedge v. United States*, 369 U.S. 438 (1962). If Applicant files a notice of appeal he also must pay the full \$505 appellate filing fee or file a motion to proceed *in forma pauperis* in the United States Court of Appeals for the Tenth Circuit within thirty days in accordance with Fed. R. App. P. 24. Accordingly, it is

ORDERED that the Amended Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (ECF No. 6) is denied and the action is dismissed because the claims are either procedurally barred or unexhausted.

FURTHER ORDERED that no certificate of appealability will issue because

Applicant has not made a substantial showing of the denial of a constitutional right. It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied without prejudice to the filing of a motion seeking leave to proceed *in forma pauperis* on appeal in the United States Court of Appeals for the Tenth Circuit.

DATED at Denver, Colorado, this 3<sup>rd</sup> day of December, 2015.

BY THE COURT:

s/Lewis T. Babcock  
Lewis T. Babcock, Senior Judge  
United States District Court