

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-02164-GPG

DONALD LANE BETTS,

Applicant,

v.

LOU ARCHULETA, Warden of Fremont Correctional Facility, and  
CYNTHIA COFFMAN, Attorney General of the State of Colorado,

Respondents.

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ORDER OVERRULING OBJECTION

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This matter is before the Court on “Applicant’s Specific Objection to the Second Order to File Pre-Answer Response” (ECF No. 13) filed *pro se* by Applicant, Donald Lane Betts, on November 19, 2015.

Mr. Betts initiated this action by filing a Petition for Habeas Corpus (ECF No. 1) that was not on the proper form as required by the local rules for the District of Colorado. Mr. Betts was given an opportunity to correct this deficiency and, on October 13, 2015, he filed on the proper form an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (ECF No. 5). Mr. Betts is challenging the validity of his conviction in a Colorado state court criminal case.

On October 14, 2015, Magistrate Judge Gordon P. Gallagher ordered Respondents to file a Pre-Answer Response that addresses the affirmative defenses of timeliness under 28 U.S.C. § 2244(d) and exhaustion of state court remedies under 28 U.S.C. § 2254(b)(1)(A). (See ECF No. 6.) Respondents did not file a Pre-Answer

Response within the time allowed. On November 10, 2015, Magistrate Judge Gallagher entered a Second Order to File Pre-Answer Response (ECF No. 8) and this is the order to which Mr. Betts objects. He argues in his objection that, “[a]lthough this court has discretion to issue extensions of time, the court is abusing it’s [sic] discretion by allowing an extension *Sua Sponte*.” (ECF No. 13 at 1.)

On November 30, 2015, Respondents filed their Pre-Answer Response (ECF No. 15) arguing that this action is untimely and that Mr. Betts has failed to exhaust state remedies. Respondents also allege in the Pre-Answer Response that they did not receive the first order directing them to file a Pre-Answer Response.

Pursuant to 28 U.S.C. § 636(b)(1)(A) a judge may reconsider any pretrial matter designated to a magistrate judge to hear and determine where it has been shown that the magistrate judge’s order is clearly erroneous or contrary to law. The Court has reviewed the file and finds that Magistrate Judge Gallagher’s Second Order to File Pre-Answer Response is not clearly erroneous or contrary to law. Therefore, the objection will be overruled. Mr. Betts may file a reply to the Pre-Answer Response that addresses the affirmative defenses raised by Respondents. Accordingly, it is

ORDERED that “Applicant’s Specific Objection to the Second Order to File Pre-Answer Response” (ECF No. 13) is overruled.

DATED at Denver, Colorado, this 1<sup>st</sup> day of December, 2015.

BY THE COURT:

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