

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.

ORDER TO FILE SUPPLEMENT TO PRE-ANSWER RESPONSE

As part of the preliminary consideration of the amended Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (ECF No. 5) filed in this action October 13, 2015, the Court ordered Respondents to file a Pre-Answer Response limited to addressing the affirmative defenses of timeliness under 28 U.S.C. § 2244(d) and/or exhaustion of state court remedies. On November 30, 2015, Respondents filed a Pre-Answer Response (ECF No. 15) and on December 7, 2015, Applicant filed a Reply to Pre-Answer Response (ECF No. 17).

Respondents argue in the Pre-Answer Response that the application is barred by the one-year limitation period in 28 U.S.C. § 2244(d) and that Applicant's claim is unexhausted. With respect to the one-year limitation period, Applicant argues in his reply that the one-year limitation period did not commence when his conviction became final because he could not have discovered the factual predicate for his claim until a later date, see 28 U.S.C. § 2244(d)(1)(D), and perhaps that the one-year limitation period

should be tolled for equitable reasons. Respondents will be directed to file a supplement to the Pre-Answer Response that addresses Applicant's timeliness arguments if Respondents wish to respond to those arguments. Accordingly, it is

ORDERED that **within twenty-one (21) days from the date of this Order** Respondents shall file a supplement to the Pre-Answer Response that complies with this Order if Respondents wish to respond to Applicant's timeliness arguments. It is

FURTHER ORDERED that **within twenty-one (21) days of the filing of any supplement to the Preliminary Response** Applicant may file a Reply to the supplement, if he desires.

DATED December 11, 2015, at Denver, Colorado.

BY THE COURT:

s/ Gordon P. Gallagher
United States Magistrate Judge