

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

ANTHONY YAWN,

Petitioner,

v.

CASE NO. 1:11-CV-158-MP-GRJ

SECRETARY OF DEPARTMENT
OF CORRECTIONS,

Respondent.

_____ /

ORDER

This matter is before the Court on Doc. 1, a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, and Doc. 2, Petitioner's motion for leave to proceed as a pauper. The Court finds that leave to proceed as a pauper should be granted.

The Respondent shall file a response to the Petition as directed in this order. The response shall be styled as an answer unless a motion to dismiss the petition, in whole or in part, due to a failure to exhaust state remedies, a procedural bar, non-retroactivity, or a statute of limitations is appropriate, in which case such ground shall be asserted by motion. See § 2254 Rule 4 and Advisory Committee Notes (Court may authorize Respondent to address procedural bars by way of a motion to dismiss, "which may avoid burdening the Respondent with the necessity of filing an answer on the substantive merits of the petition."); § 2254 Rule 5(b).¹ If a motion to dismiss some or

¹The face of the petition reflects that it may be time-barred. Accordingly, the Court is affording Respondent a shorter response period in order to facilitate expeditious resolution by motion, if Respondent concludes that a motion to dismiss is warranted.

all of the claims on a procedural ground is filed, Respondent need not also file an answer *as to the merits of those claims only* until the Court rules on the motion asserting the procedural ground. See *id.* Respondent may respond to the merits of the Petition without waiving the exhaustion requirement. See § 2254(b)(2) and § 2254(b)(3). Petitioner may file a reply to any of Respondent's arguments, including a motion to dismiss, within the time set by this order, but is not required to do so. § 2254 Rule 5(e).

The Court will review the record after the answer (or other motion) and Petitioner's reply (if any) are filed. If it does not appear that a hearing or additional argument is warranted, then the undersigned will make appropriate disposition of the motion or petition. If an evidentiary hearing is warranted and permitted, counsel will be appointed. § 2254 Rule 8. Accordingly, it is

ORDERED AND ADJUDGED:

1. The motion for leave to proceed as a pauper, Doc. 2, is **GRANTED**.
2. The Clerk shall serve a copy of the petition, Doc. 1, along with this order, on Respondent and the Attorney General of the State of Florida **via regular first-class mail**.
3. Respondent shall file an answer or other pleading on or before **December 5, 2011**. If voluminous exhibits or records (such as transcripts) are submitted in support of the answer, **paper copies shall be provided to the court**.
3. Petitioner shall have until **January 5, 2012**, to file a reply, if desired.

DONE AND ORDERED this 4th day of October 2011.

s/ Gary R. Jones
GARY R. JONES
United States Magistrate Judge