

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MARCOS DELA CRUZ,

4:08CV3110

Petitioner,

v.

**MEMORANDUM
AND ORDER**

DENNIS BAKEWELL, Warden of
Nebraska State Penitentiary, and
ROBERT HOUSTON, Director of
Nebraska Department of Correctional
Services,

Respondents.

This matter is before the court on its own motion. On July 10, 2008, Respondents filed State Court Records. (Filing No. [7](#).) Thereafter, the parties filed briefs on the merits of the Petition. (Filing Nos. [11](#), [13](#), and [14](#).) Respondents argue that Petitioner's claims are procedurally defaulted because they were not raised in a post-conviction motion, however, the court cannot make that determination without certain state-court records which were not filed.

In the State Court Records before the court, Petitioner's appointed counsel requested time to file a motion for post-conviction relief. (Filing No. [7-2](#), Attach. 1, at CM/ECF pp. 36-38.) In addition, at that evidentiary hearing, the court requests briefs from the parties regarding their arguments. (Filing No. [7-8](#), Attach. 7, at CM/ECF pp. 36-38.) However, no motion for post-conviction relief or related briefing is included in the State Court Records. Therefore, Respondents must supplement the State Court Records in this matter.

IT IS THEREFORE ORDERED that:

1. No later than December 29, 2008, Respondents shall file a supplement

to the State Court Records. Such supplement shall include a copy of Petitioner's post-conviction motion filed in state court and all briefing relating to the state post-conviction motion provided to the state district court.

2. In the event that the requested documents do not exist or are missing, Respondents shall file a separate brief with the court explaining the efforts taken to locate the documents.

November 25, 2008.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge