

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

BARTON RAY GAINES,
Petitioner,

v.

NATHANIEL QUARTERMAN, Director,
Texas Department of Criminal Justice,
Correctional Institutions Division,
Respondent.

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Civil Action No. 4:08-CV-147-Y

ORDER PERMITTING PROCEEDING IN THE DISTRICT COURT
and
ORDER, NOTICE, AND INSTRUCTIONS TO PARTIES

(☒) A filing fee in the amount of \$5.00 has been tendered.

(☐) Pursuant to the provision of 28 U.S.C. § 1915, permission is hereby granted for the above named petitioner to proceed *in forma pauperis* in this Court until judgment is entered herein.

It is therefore ORDERED that the parties shall comply with the following directives and the clerk of Court shall take the action indicated below:

You will take notice that a Petition for Writ of Habeas Corpus, numbered and styled as above, and supporting memorandum have been filed in this Court pursuant to 28 U.S.C. § 2254. It appears, however, that Petitioner has filed this action more than one year after his state court conviction became final or the time for seeking such review expired, and/or the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence. As such, this case may be time-barred. *See* 28 U.S.C. § 2244(d). The following orders are hereby entered to enable the court to determine whether this proceeding is subject to summary dismissal on limitations grounds.

Preliminary Response: Respondent is directed to file a preliminary response and the state court record within thirty (30) days from the date of this order. This response shall be limited to providing the Court with the following information, if relevant to the claim or claims raised:

- (a) the date the judgment of conviction was entered;
- (b) the date an appeal was perfected or the time for seeking direct review expired;
- (c) the date the judgment of conviction became final;
- (d) the date the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence, if applicable;
- (e) the date any relevant application or motion for postconviction relief was filed in the trial court;

- (f) the date any relevant application or motion for postconviction relief was finally determined by the Texas Court of Criminal Appeals and the date Petitioner was notified of that determination; and
- (g) whether Respondent believes that this action is barred by limitations under 28 U.S.C. § 2244(d).

Reply: Petitioner may file a reply within thirty (30) days after Respondent files his preliminary response. The reply should explain why this case is not barred by limitations under 28 U.S.C. § 2244(d).

A separate show cause order will be entered and respondent will be required to file an answer if this case survives summary dismissal.

In every case a copy of the petition and any order shall be served on the Respondent and the Attorney General, unless an agreement has been reached with the Attorney General providing for alternative means of service.¹ A true copy of this Order shall be mailed to Petitioner or his attorney of record.

SIGNED April 2, 2008.

_____/s/ Charles Bleil
CHARLES BLEIL
UNITED STATES MAGISTRATE JUDGE

¹Based upon communication with the Texas Attorney General's Office, this Court will not serve copies of the petition, attachments, and orders upon Director Nathaniel Quarterman. Instead, copies of the petition, attachments, and orders will be served electronically upon the Texas Attorney General, counsel for Quarterman, and will be directed to the attention Elizabeth Goettert, Assistant Attorney General, Postconviction Litigation Division, P. O. Box 12548, Austin, TX 78711-2548. See FED. R. CIV. P. 5(b)(2)(D).