

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

TODD DEAL,

Petitioner,

v.

CASE NO. 06-3053-SAC

DAVID R. MCKUNE, et al.,

Respondents.

O R D E R

Petitioner proceeds pro se on a petition for writ of habeas corpus filed under 28 U.S.C. § 2254. Before the court is respondents' motion for an extension of time to file an answer and return (Doc. 4), and petitioner's motion for the immediate issuance of a writ of habeas corpus (Doc. 5).

Finding good cause exists for the additional time requested by respondents to file an answer and return, the court grants respondents' motion.

Petitioner's motion for issuance of a writ of habeas corpus is denied. Petitioner contends respondents failed to file a timely response to the show cause order entered by the court on March 22, 2006. The record, however, discloses that respondents filed their motion for an extension of time in a timely manner on April 10, 2006, the same date petitioner signed and mailed his motion for the immediate issuance of a writ. Additionally, default judgment against the State in a habeas corpus proceeding is extremely disfavored and wholly inappropriate when no default by the State is intended. See Bleitner v. Welborn, 15 F.3d 652, 653 (7th Cir.

1994); Bermudez v. Reid, 733 F.2d 18 (2d Cir. 1984), *cert. denied*, 469 U.S. 874 (1984). See also Stines v. Martin, 849 F.2d 1323, 1325 (10th Cir. 1988)(reversing writ of habeas corpus granted by the district court because the government had failed to respond to the court's order; delay not extensive or egregious enough to violate petitioner's due process rights).

IT IS THEREFORE ORDERED that respondents' motion for an extension of time (Doc. 4) is granted, and that respondents are granted to and including June 9, 2006, to file an answer and return.

IT IS FURTHER ORDERED that petitioner's motion for the immediate issuance of a writ of habeas corpus (Doc. 5) is denied.

IT IS SO ORDERED.

DATED: This 18th day of April 2006 at Topeka, Kansas.

s/ Sam A. Crow
SAM A. CROW
U.S. Senior District Judge