

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

DONALD L. BROWN, II,

Petitioner,

v.

CASE NO. 19-3036-SAC

ROGER WERHOLTZ,

Respondent.

MEMORANDUM AND ORDER

This matter is a petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2254. When Petitioner filed his petition, the Court conducted an initial review under Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. On January 29, 2020, the Court issued a Memorandum and Order directing Petitioner to advise the Court whether he was pursuing an appeal from the state district court's denial of his motion to correct illegal sentence. (Doc. 8.) Petitioner filed a response on February 1, 2020, (Doc. 9), and supplemented his response with exhibits filed July 6, 2020 (Doc. 10), indicating that he is not pursuing such an appeal.

The Court has reviewed Petitioner's filings and concludes that a limited Pre-Answer Response ("PAR") is appropriate. See *Wood v. Milyard*, 566 U.S. 463, 467 (2012); *Denson v. Abbott*, 554 F. Supp. 2d 1206 (D. Colo. 2008). Accordingly, the Court directs Respondent to file such a response limited to addressing the affirmative defenses of exhaustion of state court remedies under 28 U.S.C. § 2254(b)(1)(A) and procedural default. If Respondent does not intend

to raise either of these affirmative defenses, Respondent shall notify the Court of that decision in the PAR.

Upon the filing of the PAR, Petitioner may reply and may provide any information that may be relevant to any defenses identified in that response.

IT IS THEREFORE ORDERD THAT Respondent is granted thirty (30) days from the date of this order to file a Pre-Answer Response that complies with this order.

IT IS FURTHER ORDERED THAT Petitioner is granted thirty (30) days from the filing of the Pre-Answer Response to file a reply if he desires.

IT IS SO ORDERED.

DATED: This 22nd day of June, 2021, at Topeka, Kansas.

S/ Sam A. Crow

SAM A. CROW
U.S. Senior District Judge