

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ADAM MURRAY COSTELLO,

Petitioner,

v.

Case No. 2:25-cv-74-JLB-NPM

SECRETARY, FLA. DEP'T OF
CORRECTIONS,

Respondent.

ORDER

Before the Court is Petitioner Adam Murray Costello's 28 U.S.C. § 2254 petition for writ of habeas corpus. (Doc. 1.) Having found that this Petition warrants a response, the Court directs Respondent Secretary of the Florida Department of Corrections to respond.

Accordingly, it is **ORDERED**:

As to Respondent:

1. On or before **February 28, 2025**, counsel for Respondent is **DIRECTED** to file a notice of appearance.
2. On or before **June 13, 2025**, Respondent is **DIRECTED** to respond to each ground and argument raised in the Petition and show cause why the Petition should not be granted. **Respondent must not expect an automatic extension of time unless good cause is shown.** The response, which may not exceed **40 pages** in length without the Court's leave, must:

- a. set forth the facts and procedural history of the case and address each ground, allegation, and argument raised in the Petition.

Conclusory statements and summary arguments that Petitioner is not entitled to relief under § 2254 are not acceptable responses.

- b. in addressing the merits of **each** ground, Respondent must identify:
 - i. where each ground was raised in the state court record;
 - ii. the reason(s) the state court denied the ground;
 - iii. the legal citations that state court relied on in denying the ground; and
 - iv. include a pinpoint citation to the state court record and a copy of the state court opinion(s) addressing the ground.
- c. be specific to this action and refer to Petitioner by name or by “Petitioner”—not “defendant” or “appellant.”
- d. state whether Petitioner has exhausted all state remedies including any post-conviction remedies available under Florida’s laws and procedural rules (e.g., the right of appeal both from the judgment of conviction and from any adverse judgment or order in the post-conviction proceedings).
 - i. If Respondent argues Petitioner has not exhausted all state remedies, the response must explain—in detail—which state remedies are unexhausted and whether Respondent waives

the exhaustive requirement. See Thompson v. Wainwright, 714 F.2d 1495 (11th Cir. 1983).

ii. If Respondent argues that any ineffective assistance of counsel claims not raised during Petitioner's initial-review collateral proceedings are procedurally defaulted, the response must discuss:

1. whether Petitioner has shown cause to excuse the procedural default under Martinez v. Ryan, 132 S. Ct. 1309 (2012); and
2. the merits of the claim as an alternate basis for disposition.

e. explain whether the Petition is timely under 28 U.S.C. § 2244(d).

i. **If the Petition is time-barred, Respondent may file a limited response and need not address the Petition's merits until the Court decides the time-bar matter.**

The response should be limited to the timeliness issue and provide only those portions of the state court record necessary to determine timeliness.

ii. If Petitioner believes that Respondent omitted a pertinent motion, brief, order, or transcript from the state court record that is relevant to the timeliness issue, Petitioner may move to expand the record to include the omitted item.

- iii. If the Court determines that the Petition is time-barred, it will dismiss the Petition without addressing the merits of the claims. If the Court determines that the Petition is timely, each party will have the opportunity to later address individual grounds in the Petition.
 - f. state whether any hearing was accorded Petitioner in the pre-trial, trial, and post-conviction stages.
 - g. state whether any claim in the Petition is otherwise barred by a procedural bar or non-retroactivity.
3. On or before **June 20, 2025**, Respondent is **DIRECTED** to electronically file the state court record on CM/ECF.
- a. The record must include—as separate exhibits—all relevant portions of the state court proceedings including:
 - i. any brief the petitioner submitted in the trial and appellate courts contesting the conviction or sentence, or contesting an adverse judgment or order in a post-conviction proceeding;
 - ii. any brief that the prosecution submitted in the trial and appellate courts relating to the conviction or sentence;
 - iii. the opinions and dispositive orders of the trial and appellate courts relating to the conviction or sentence; and
 - iv. transcripts of pre-trial, trial, sentencing, and post-conviction proceedings. Respondent must tell the Court if any relevant

proceeding has been recorded but not transcribed, and if a transcript cannot be obtained, the Respondent must submit a narrative summary of the evidence.

- b. Respondent is **DIRECTED** to include an electronically bookmarked index with sufficiently detailed bookmarks that identify the title of each exhibit and the page location within the record as filed in CM/ECF. **Failure to do so may result in the Court directing Respondent to refile the state court record.**
 - c. Respondent is **DIRECTED** to arrange the record so each post-conviction motion, response, and state court order addressing the motion is a separate exhibit.
4. Respondent is **DIRECTED** to serve any *pro se* litigant with a paper copy of the record upon which the response relies. See Rodriguez v. Fla. Dep't of Corr., 748 F.3d 1073, 1078) (11th Cir. 2014). The same requirement governs any supplemental exhibit that Respondent files.

As to Petitioner:

1. Petitioner is **DIRECTED** to send Respondent's attorney of record a copy of every future pleading, motion, or other paper submitted for the Court's review. Petitioner must certify the date that an accurate copy of his filing was mailed to Respondent's attorney—called a "Certificate of Service." If any filing does not include a certificate of service, it will be stricken from the case and disregarded by the Court.

2. Petitioner may file a reply to the response but is not required to do so. Any reply must be filed **30 days** after the response is filed. The Court will not address new grounds raised in the reply. See United States v. Evans, 473 F.3d 1115, 1120 (11th Cir. 2006). The reply must not exceed **10 pages**.

As to the Clerk of Court:

1. The Clerk of Court is **DIRECTED** to:
 - a. electronically send a copy of this Order, the operative Petition, any memorandum and exhibits filed with the Petition to Respondent, and a courtesy copy to the Attorney General of the State of Florida; and
 - b. mail a copy of this Order to Petitioner.
2. If applicable, the Clerk is **DIRECTED** to dismiss all named Respondents **except for the Secretary of the Florida Department of Corrections** and terminate them from the file.

DONE and ORDERED in Fort Myers, Florida on February 10, 2025..



JOHN L. BADALAMENTI
UNITED STATES DISTRICT JUDGE

Copies: Counsel of Record