

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA

AUGUSTA DIVISION

MICHAEL LANE BREWER,)
)
 Petitioner,)
)
 v.) CV 117-070
)
 HOMER BRYSON, Commissioner,)
 Georgia Department of Corrections,)
)
 Respondent.)

ORDER

Petitioner Michael Lane Brewer, an inmate currently incarcerated at Riverbend Correctional Facility in Milledgeville, Georgia, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his conviction for two counts of computer child exploitation in the Superior Court of Richmond County. On July 17, 2017, after receiving evidence that the Georgia Supreme Court had denied Petitioner’s application for a certificate of probable cause, the Court granted Petitioner leave to proceed *in forma pauperis* and directed Respondent to file a responsive pleading within sixty days. (See doc. no. 7.) On July 25, 2017, Petitioner filed an amended petition, raising the same claims as in his original petition but including further information proving exhaustion. (Doc. no. 8.)

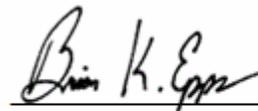
Federal Rule of Civil Procedure 15, which governs amendment of pleadings, applies to § 2254 petitions. See *Mayle v. Felix*, 545 U.S. 644, 655 (2005). Rule 15(a)(1) provides that:

A party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

As Respondent has not yet answered, Petitioner properly amended his petition under Fed. R. Civ. P. 15(a) without leave of the Court.

However, under the Rule 15(a), Petitioner's amended petition (doc. no. 8) supersedes and replaces Petitioner's original petition in its entirety, and is therefore the operative pleading in this case. See Krinsk v. SunTrust Banks, Inc., 654 F.3d 1194, 1202 (11th Cir. 2011); Lowery v. Ala. Power Co., 483 F.3d 1184, 1219 (11th Cir. 2007) ("an amended complaint supersedes the initial complaint and becomes the operative pleading in the case"); see also Malone v. Sec'y, Florida Dep't of Corr., No. 806-CV-720-T-27MAP, 2009 WL 2579216, at *1 (M.D. Fla. Aug. 20, 2009) (recognizing amended § 2254 petition completely superseded original petition). Accordingly, the Court **EXTENDS** the time for Respondent to respond to Petitioner's amended petition as required by the Court's July 17th Order until October 2, 2017.

SO ORDERED this 8th day of August, 2017, at Augusta, Georgia.



BRIAN K. EPPS
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA