

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

JIMMY T. DAVIS,)	
)	
Petitioner,)	
vs.)	
)	Case No. 15-cv-169-CJP
JAMES N. CROSS, JR.,)	
)	
Respondent.)	

ORDER

PROUD, Magistrate Judge:

Before the Court is petitioner’s Motion to Reconsider Order Granting Respondent [Leave to File] Supplemental Response. (**Doc. 37**).

On October 5, 2015, the Court granted petitioner’s request to expedite consideration of his petition filed under 28 U.S.C. §2241. The Court directed respondent to file a supplemental response by October 19, 2015. See, Doc. 29. Respondent complied on October 14, 2015, five days early. See, Doc. 35. The Court then granted petitioner until October 28, 2015, in which to file a reply. See, Doc. 36.

In his original response, respondent erroneously stated that petitioner had not filed a motion under 28 U.S.C. §2255. He has now abandoned that erroneous statement. His supplemental response repeats the same substantive position that he took in his original response, i.e., that *Rosemond v. United States*, 134 S. Ct. 1240 (2014), does not entitle Davis to habeas relief because Davis knew that his co-defendant had a firearm in sufficient time to have abandoned the bank robbery.

Contrary to petitioner’s protestations, directing respondent to file a

supplemental response did not violate Fed.R.Civ.P. 12(b), Rule 5 of the Rules Governing Section 2254 Cases, or binding circuit precedent. The supplemental response does not raise a “defense” within the meaning of Rule 12, and Rule 5 in no way prohibits amending or supplementing the original response. Further, Fed.R.Civ.P. 15(a)(2) requires the Court to freely grant leave to amend pleadings “when justice so requires.”

The filing of the supplemental response has not prejudiced Davis and has not delayed resolution of his case. The Court is prepared to rule on the petition upon the filing of petitioner’s reply.

Petitioner’s reply is due by October 28, 2015.

Petitioner’s Motion to Reconsider Order Granting Respondent [Leave to File] Supplemental Response (**Doc. 37**) is **DENIED**.

IT IS SO ORDERED.

DATE: October 21, 2015.

s/ Clifford J. Proud
CLIFFORD J. PROUD
UNITED STATES MAGISTRATE JUDGE