

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

SAM SMITH,	)	
	)	
Petitioner,	)	
v.	)	CIVIL ACTION
	)	NO. 09-10434-NMG
DUANE MacEACHERN,	)	
Superintendent,	)	
	)	
Respondent.	)	

**REPORT AND RECOMMENDATION ON  
PETITIONER’S SECOND MOTION TO STAY**

February 17, 2017

DEIN, U.S.M.J.

**I. INTRODUCTION**

The petitioner, Sam Smith, is currently serving a life sentence for first degree premeditated murder in the 1991 shooting death of Steven Gaul. See Commonwealth v. Smith, 450 Mass. 395, 396, 879 N.E.2d 87, 90 (2008). The matter is presently before the court on Petitioner’s Second Motion to Stay (Docket No. 143) pursuant to which Smith is seeking a stay of this habeas proceeding to pursue a claim in state court that the prosecutor failed to disclose Brady<sup>1</sup> material, namely information about an allegedly pending joint federal and state investigation involving two percipient witnesses. Included in the motion to stay is also a request for leave to amend his habeas petition to include the Brady claim.

<sup>1</sup> Brady v. Maryland, 373 U.S. 83, 87, 83 S. Ct. 1194, 1196-97, 10 L. Ed. 2d 215 (1963).

*After consideration of petitioner's objections thereto (Docket Nos. 171 and 172), Report and Recommendation accepted and adopted.  
JSM Gorton, USDJ 3/27/17*