

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

|                |   |                       |
|----------------|---|-----------------------|
| MARK MCCRAY,   | ) |                       |
| Petitioner,    | ) |                       |
|                | ) |                       |
| v.             | ) | C.A. No. 11-11959-MLW |
|                | ) |                       |
| LISA MITCHELL, | ) |                       |
| Respondent.    | ) |                       |

MEMORANDUM AND ORDER

WOLF, D.J. September 12, 2012

I. INTRODUCTION

On November 3, 2011, pro se petitioner Mark McCray filed a petition for Writ of Habeas Corpus pursuant to 28 U.S.C. §2254. The memorandum of law accompanying the petition contained two claims that were not mentioned in the petition itself. Petitioner has filed a Motion to Amend the Petition (Docket No. 15) to include those two claims.

In addition, on November 30, 2011, the Magistrate Judge ordered respondent to file an answer to the petition within 21 days. Respondent filed her Answer on December 3, 2011, along with a Motion for a Scheduling Order (Docket No. 10). In the Motion for a Scheduling Order, respondent requested an extension of time to January 25, 2012 for filing her Memorandum of Law in Opposition to the Petition for a Writ of Habeas Corpus. The motion was unopposed. On January 24, 2012, respondent filed her memorandum. (Docket No. 11).

## II. DISCUSSION

### A. Motion to Amend

A court may grant a petitioner leave to amend his complaint before trial, and "should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). Here, respondent would not be prejudiced by addition of the two claims, as those claims were briefed in the petitioner's memorandum of law in support of his petition. Furthermore, the petitioner is proceeding pro se. Accordingly, the court is allowing petitioner to amend his petition to include the two additional counts, as set forth in his Motion to Amend.

### B. Motion for Order to Schedule

Respondent's motion seeking an extension of time to file a memorandum in opposition was not opposed, and the memorandum has since been filed within the requested period. Accordingly, this motion is being allowed.

## III. ORDER

Accordingly, it is hereby ORDERED that:

1. The respondent's Motion for Order to Schedule (Docket No. 10) is ALLOWED.
2. The petitioner's Motion to Amend Petition for Writ of Habeas Corpus (Docket No. 15) is ALLOWED.

\_\_\_\_\_/s/ Mark L. Wolf\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE