

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CHRISTOPHER DELGADO,

Petitioner,

Case Number: 04-CV-73747

v.

HONORABLE DENISE PAGE HOOD

BLAINE C. LAFLER,

Respondent.

_____/

**AMENDED OPINION AND ORDER GRANTING IN PART PETITIONER'S
PETITION FOR LEAVE TO REOPEN HABEAS CORPUS PROCEEDINGS
AND FOR WRIT OF HABEAS CORPUS, DIRECTING SERVICE,
AND REQUIRING RESPONSIVE PLEADING**

Petitioner Christopher Delgado is a state inmate currently incarcerated at the Saginaw Correctional Facility, in Saginaw, Michigan. He filed a petition for a writ of habeas corpus on September 24, 2004, through his attorneys. On October 26, 2004, the Court issued an Order of Summary Dismissal Without Prejudice because Petitioner failed to exhaust his state court remedies with respect to two of his claims. The Court further held that the one-year statute of limitations found in 28 U.S.C. § 2244(d)(1) would be tolled from the date Petitioner filed his habeas petition, September 24, 2004, until the time Petitioner returned to federal court to pursue habeas relief, provided that Petitioner sought leave to reopen the habeas corpus proceedings within thirty days of exhausting state court remedies. Now before the Court is Petitioner's Petition for Leave to Reopen Habeas Corpus Proceedings and for Writ of Habeas Corpus.

In his Petition for Leave to Reopen Habeas Corpus Proceedings, Petitioner states that he has now exhausted his state court remedies by completing collateral review in state court. Petitioner states that he filed a motion for relief from judgment in the trial court, which was denied. People v. Delgado, No. 00-013607 (Wayne County Circuit Court Dec. 2, 2004). Petitioner filed an application for leave to appeal in the Michigan Court of Appeals. The Michigan Court of Appeals denied leave to appeal on September 23, 2005. People v. Delgado, No. 261081 (Mich. Ct. App. Sept. 23, 2005). Petitioner then filed an application for leave to appeal in the Michigan Supreme Court, which denied leave to appeal on December 27, 2005. People v. Delgado, No. 129782 (Mich. Dec. 27, 2005). Petitioner, through counsel, filed the petition to reopen on January 20, 2006.

Petitioner has filed the motion to reopen within the thirty days prescribed in the Court's Order dismissing the petition without prejudice. The Court, therefore, will grant the Petition for Leave to Reopen Habeas Corpus Proceedings. Petitioner filed his Petition for Leave to Reopen Habeas Corpus Proceedings and Petition for Writ of Habeas Corpus as one pleading. The Court declines to rule on the Petition for Writ of Habeas Corpus at this time. The Court shall rule on the habeas corpus petition after an answer and Rule 5 materials have been filed.

For the forgoing reasons, **IT IS ORDERED** that Petitioner's Petition for Leave to Reopen Habeas Corpus Proceedings and for Writ of Habeas Corpus is **GRANTED IN PART**. The Court grants the Petition for Leave to Reopen Habeas Corpus Proceedings and declines to rule at this time on the Petition for Writ of Habeas Corpus.

IT IS FURTHER ORDERED that the Clerk of the Court serve a copy of the “Petition for Leave to Reopen Habeas Corpus Proceedings and For Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254,” and a copy of this Order on Respondent and on the Attorney General for the State of Michigan as provided in Rule 4, Rules Governing Section 2254 Cases.

IT IS FURTHER ORDERED that Respondent file an answer responding to the allegations of the petition in accordance with Rule 5, Rules Governing Section 2254 Cases, by **September 18, 2006**.

/s/ Denise Page Hood
DENISE PAGE HOOD
UNITED STATES DISTRICT JUDGE

DATE: August 25, 2006

CERTIFICATION

I hereby certify that a copy of the foregoing document was served upon counsel of record on August 25, 2006, by electronic and/or ordinary mail.

s/William F. Lewis
Case Manager