

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOSEPH BENNETT,

Petitioner,

v.

Civil No. 2:06-CV-13730
HONORABLE DENISE PAGE HOOD
UNITED STATES DISTRICT JUDGE

CAROL HOWES,

Respondent,

OPINION AND ORDER GRANTING MOTION TO LIFT THE STAY AND TO
REOPEN HABEAS PETITION, ORDER THAT THE PETITION BE SERVED
UPON THE RESPONDENT AND THE MICHIGAN ATTORNEY GENERAL, AND
ORDER DIRECTING RESPONDENT TO FILE AN ANSWER AND THE RULE 5
MATERIALS IN THIS CASE

On March 30, 2007, this Court entered an opinion and order granting petitioner's motion to hold his habeas petition in abeyance pending the completion of state post-conviction proceedings by petitioner. The Court also administratively closed the case. *Bennett v. Howes*, No. 2007 WL 1012807 (E.D. Mich. March 30, 2007). Petitioner has now filed a motion to lift the stay and to reopen the petition for writ of habeas corpus. For the reasons stated below, the motion to lift the stay and to reopen the habeas petition is **GRANTED**. The Court will further order that the Clerk of the Court serve a copy of the petition for writ of habeas corpus upon respondent and the Michigan Attorney General's Office by first class mail. The Court will further order the respondent to file a responsive pleading to the petition and the Rule 5 materials within **sixty (60)** days of the

Court's order.

Federal courts have the power to order that a habeas petition be reinstated upon timely request by a habeas petitioner, following the exhaustion of state court remedies. See *e.g. Rodriguez v. Jones*, 625 F. Supp. 2d 552, 559 (E.D. Mich. 2009). Because petitioner is now alleging that his claims have been exhausted with the state courts, his petition is now ripe for consideration. Accordingly, the Court will order that the original habeas petition be reopened.

The Court will further order that the Clerk of the Court serve a copy of the habeas petition and a copy of this Order on Respondent and on the Attorney General for the State of Michigan by first class mail as provided in Rule 4 of the Rules Governing § 2254 Cases, Rule 4. See *Coffee v. Harry*, 2005 WL 1861943, * 2 (E.D. Mich. August 2, 2005).

The Court will also order the respondent to file a response to the habeas petition within sixty days of the Court's order. A habeas corpus petitioner who challenges the legality of his state custody is entitled to reasonably prompt disposition of his petition. *Ukawabutu v. Morton*, 997 F. Supp. 605, 610 (D.N.J. 1998). This Court has the discretion under the rules governing responses in habeas corpus cases to set a deadline for a response to petitioner's habeas petition. *Erwin v. Elo*, 130 F. Supp. 2d 887, 891 (E.D. Mich. 2001); 28 U.S.C. § 2243.

The Court will also order respondent to provide this Court with the Rule 5

materials at the time that it files its answer. The habeas corpus rules require respondents to attach the relevant portions of the transcripts of the state court proceedings, if available, and the court may also order, on its own motion, or upon the petitioner's request, that further portions of the transcripts be furnished. *Griffin v. Rogers*, 308 F. 3d 647, 653 (6th Cir. 2002); Rules Governing § 2254 Cases, Rule 5, 28 U.S.C. foll. § 2254. An appropriate response to a habeas petition is an answer which responds to each allegation contained in the petition and which attaches copies of the relevant judgment of conviction, any available and relevant transcripts, and any post-conviction pleadings and decisions. *Chavez v. Morgan*, 932 F. Supp. 1152, 1153 (E.D. Wis. 1996).

Finally, the Court will give petitioner forty-five days from the receipt of the respondent's answer to file a reply brief to the respondent's answer, if he so chooses. Rule 5(e) of the Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254 states that a habeas petitioner "may submit a reply to the respondent's answer or other pleading within a time fixed by the judge." See *Baysdell v. Howes*, No. 2005 WL 1838443, * 4 (E.D. Mich. August 1, 2005).

Based on the foregoing,

IT IS ORDERED that the motion to lift the stay and to reopen the habeas petition to the Court's active docket is **GRANTED**.

IT IS FURTHER ORDERED that the Clerk of the Court serve a copy of the petition for writ of habeas corpus [Dkt. # 1] and a copy of this Order on respondent

and the Attorney General by first class mail.

IT IS FURTHER ORDERED that respondent shall file an answer and produce the entire state court record within **sixty (60) days** of the date of this order or show cause why they are unable to comply with the order.

IT IS FURTHER ORDERED that petitioner shall have **forty-five (45) days** from the date that he receives the answer to file a reply brief.

s/Denise Page Hood
Denise Page Hood
UNITED STATES DISTRICT JUDGE

Dated: February 22, 2011

I hereby certify that a copy of the foregoing document was mailed to Joseph Bennett #239799, Lakeland Correctional Facility, 141 First Street, Coldwater, MI 49036 and the attorneys of record on this date, February 22, 2011, by electronic and/or ordinary mail.

s/LaShawn R. Saulsberry
Relief Case Manager, (313) 234-5165