

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

GAMAL A. HILTON,

Petitioner,

v.

Case Number: 07-CV-14415
Honorable Lawrence P. Zatkoff

JOHN PRELESNIK,

Respondent,

**ORDER (1) DENYING MOTION FOR LEAVE TO HOLD AN
EVIDENTIARY HEARING FOR RESPONDENT'S REPEATED FAILURE TO
FILE THE RULE 5 MATERIAL, AND (2) DENYING MOTION REQUESTING
THIS COURT TO ISSUE DEADLINE OR GRANT PETITIONER'S FEBRUARY
4TH MOTION FOR EVIDENTIARY HEARING AS MOOT**

Pending before the Court are the following motions filed by Petitioner Gamal A. Hilton: (1) "Motion for Leave to Hold an Evidentiary Hearing for Respondent's Repeated Failure to File the Rule 5 Material," filed February 4, 2010, and (2) "Motion Requesting this Court to Issue Deadline or Grant Petitioner's February 4th Motion for Evidentiary Hearing," filed April 29, 2010. (dkt. ## 30 & 32.) For the reasons stated below, the Court denies Petitioner's motion for leave to hold an evidentiary hearing regarding Respondent's failure to file certain Rule 5 materials. Given that determination, the Court denies as moot Petitioner's motion requesting the Court to issue a deadline.

Petitioner filed his February 4, 2010, motion, asking that the Court hold an evidentiary hearing because Respondent failed to file the requested transcripts, specifically the preliminary examination transcript, Vol. II, dated July 21, 2003. In answering the Court's

order compelling the production of that document, filed February 5, 2009, Respondent stated that he has been diligent in trying to locate the missing transcripts and will file them when received. To date, Respondent has not been able to locate that particular transcript. However, in reviewing the already-filed Rule 5 materials, the Court has located excerpts from the preliminary examination, Vol. II, attached to Petitioner's brief and attached to the Rule 5 materials filed with the Michigan Supreme Court brief.

Against that backdrop, **IT IS ORDERED** that Petitioner's "Motion for Leave to Hold an Evidentiary Hearing for Respondent's Repeated Failure to file the Rule 5 Material" is **DENIED**. (Dkt. # 30.) Petitioner need not file any additional motions regarding this issue.

IT IS FURTHER ORDERED that, given that determination, Petitioner's "Motion Requesting this Court to Issue Deadline or Grant Petitioner's February 4th Motion for Evidentiary Hearing" is **DENIED** as moot. (Dkt. # 32.)

IT IS SO ORDERED.

s/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: September 14, 2010

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on September 14, 2010.

s/Marie E. Verlinde _____

Case Manager
(810) 984-3290