

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

DARNELL MISSOURI,

Petitioner,

v.

Case Number: 08-CV-11660

THOMAS BIRKETT,

Respondent.

**ORDER DENYING PETITIONER'S MOTION FOR DEFAULT JUDGMENT AND
OBJECTIONS TO RESPONDENT'S RULE 5 MATERIALS**

Petitioner Darnell Missouri, a state inmate, presently incarcerated at the Bellamy Creek Correctional Facility in Ionia, Michigan, has filed a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. This matter is before the court on Petitioner's "Motion for Default Judgment Against Respondents." (Dkt. # 12.) Petitioner seeks a default judgment because he alleges that Respondent failed to timely answer his petition. Petitioner has also filed "Objections to Respondent's Rule 5 Materials," alleging that Respondent has failed to file some Rule 5 materials—the relevant appellate briefs and the police and investigation reports. (Dkt. # 11.) These contentions are without merit.

On April 25, 2008, this court issued an order, ordering Respondent to file an answer to Petitioner's petition by October 31, 2008. Respondent complied with the court's order and filed its answer on October 31, 2008. (Dkt. # 9.) Respondent also filed all necessary Rule 5 materials on November 6, 2008, including the relevant appellate briefs and the investigation reports. (Dkt. # 10.) Petitioner's motion and

objections will therefore be denied as without merit. Furthermore, a default judgment is generally unavailable in a habeas-corpus proceeding on the ground that government officials failed to file a timely response to the petition. *See, e.g., Allen v. Perini*, 424 F.2d 134, 138 (6th Cir. 1970).

Accordingly,

IT IS ORDERED that Petitioner's motion and objections [Dkt. ## 11 and 12] are DENIED.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: December 10, 2008

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, December 10, 2008, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522