

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DERAY SMITH,

Petitioner,

v.

LLOYD RAPELJE,

Respondent.

Civil Action No. 09-CV-14876

HON. BERNARD A. FRIEDMAN

OPINION AND ORDER GRANTING MOTION TO LIFT THE STAY OF PROCEEDINGS, AMENDING THE CAPTION, GRANTING THE MOTION TO AMEND PETITION, ORDERING THAT THE AMENDED PETITION BE SERVED UPON THE RESPONDENT AND THE MICHIGAN ATTORNEY GENERAL AND DIRECTING RESPONDENT TO FILE AN ANSWER AND THE RULE 5 MATERIALS

Petitioner has filed a *pro se* application, and an amended application, for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, in which he challenges his conviction for first-degree murder and armed robbery. Petitioner also filed a motion to hold the petition in abeyance while he returned to the state courts to exhaust additional claims. On January 7, 2010, this court entered an opinion and order granting that motion and administratively closing the case. Petitioner has now filed a “Supplemental Habeas Corpus,” which is in reality a motion to lift the order holding the habeas corpus petition in abeyance.

Because petitioner alleges that his claims have been exhausted with the state courts, his petition is now ripe for consideration. Accordingly, the court shall order that the original habeas petition be reopened.

The court shall also order that the caption in this case be amended to reflect that the proper respondent in this case is now Lloyd Rapelje, the warden of Saginaw Correctional Facility in Freeland, Michigan, where petitioner is currently incarcerated.

The court shall also grant petitioner's motion to amend his habeas petition. Further, the court shall order that the Clerk of the Court serve a copy of the amended 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. The court shall also order the respondent to file a response to the amended habeas petition, and the Rule 5 materials, within 180 days of this order. Finally, the court shall order that petitioner file a reply brief, if he cares to do so, within 45 days from the receipt of the respondent's answer. Accordingly,

IT IS ORDERED that petitioner's motion to lift the stay of proceedings is granted. The Clerk of the Court shall reopen the habeas petition and place it on the court's active docket.

IT IS FURTHER ORDERED that the caption of the case be amended to reflect that Lloyd Rapelje is the proper respondent in this case.

IT IS FURTHER ORDERED that the motion to amend the petition for writ of habeas corpus is granted.

IT IS FURTHER ORDERED that the Clerk of the Court serve a copy of the amended petition for writ of habeas corpus [docket entry 4] and a copy of this order on respondent and the Michigan Attorney General by first class mail.

IT IS FURTHER ORDERED that respondent shall file an answer and produce the entire state

court record within 180 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 45 days from the date that he receives the answer to file a reply brief, if he cares to do so.

S/Bernard A. Friedman
BERNARD A. FRIEDMAN
SENIOR UNITED STATES DISTRICT COURT

Dated: August 25, 2011
Detroit, Michigan