

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EDWARD L. FINLEY, JR.,

Petitioner,

v.

CASE NO. 10-11936
HONORABLE LAWRENCE P. ZATKOFF

DAVID BERGH,

Respondent.

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ORDER

- (1) GRANTING PETITIONER'S MOTION FOR EXPANSION OF THE RECORD,**
(2) GRANTING PETITIONER'S MOTION TO SUPPLEMENT HIS PETITION,
(3) DENYING PETITIONER'S MOTIONS TO PROCEED *IN FORMA PAUPERIS*, AND
(4) DENYING PETITIONER'S MOTION FOR AN EVIDENTIARY HEARING

This matter is pending before the Court on several motions filed by habeas petitioner Edward L. Finley, Jr., who filed a *pro se* habeas corpus petition pursuant to 28 U.S.C. § 2254 on May 13, 2010. The habeas petition challenges Petitioner's 2002 Wayne County convictions for first-degree murder and felony firearm. Petitioner was sentenced to two years in prison for the felony firearm conviction and to life imprisonment for the murder conviction.

In his habeas petition, Petitioner alleges that (1) his trial and appellate attorneys were ineffective, (2) his Fourth Amendment rights were violated when narcotics officers illegally searched his home and seized evidence, and (3) his Sixth Amendment rights were violated by the trial court's failure to instruct the jury on lesser-included offenses. In a motion to supplement the habeas petition, Petitioner argues that (1) the evidence was insufficient to support his convictions, (2) the prosecutor's remarks during closing arguments deprived him of a fair trial, and (3) he was not given an opportunity to respond to this Court's order granting Respondent an enlargement of

time to file a response to the habeas petition.

In other motions, Petitioner seeks an evidentiary hearing and to expand the record with exhibits supporting his Fourth Amendment claim. Finally, Petitioner has filed two motions to proceed *in forma pauperis*. The latter one is joined to Petitioner's motion to supplement his habeas petition. Those two motions have been docketed as one document. *See* Dkt. #15.

The motions to proceed *in forma pauperis* [Dkt. #6 and the first page of Dkt. #15] are **DENIED** as moot because Petitioner was granted leave to proceed *in forma pauperis* when he filed his habeas petition. *See* Dkt. #3, filed on May 21, 2010. Petitioner's motion for an evidentiary hearing [Dkt. #14] is **DENIED** because the Court is not persuaded that Petitioner would be entitled to habeas relief even if he were not at fault for failing to develop the facts in state court and even if he could prove the factual allegations. 28 U.S.C. § 2254(e)(2); *Post v. Bradshaw*, 621 F.3d 406, 419 (6th Cir. 2010). The Court will reconsider Petitioner's motion for an evidentiary hearing, if necessary, following receipt of the responsive pleading and state court record. It will not be necessary for Petitioner to renew his motion.

Petitioner's motion to expand the record [Dkt. #7] is **GRANTED** because Rule 7 of the Rules Governing Section 2254 Cases authorizes expansion of the record with materials relating to the petition. The motion to supplement the habeas petition [pp. 2-27 of Dkt. #15] likewise is **GRANTED**. Supplemental pleadings are permitted under Federal Rule of Civil Procedure 15(d). To the extent that Petitioner is amending his petition, his supplemental claims relate back to the date of the initial petition and are not time-barred, because they are supported by facts similar in time and type to those set forth in the initial pleading. Fed. R. Civ. Proc. 15(c)(1)(B); *Mayle v. Felix*, 545 U.S. 644, 650 (2005).

The Court notes that Respondent had been granted until January 21, 2011, to file its response to Petitioner's three initial claims. As Petitioner only filed his motion to supplement his petition on December 28, 2010, however, the Court finds that the interests of justice weigh in favor of granting Respondent additional time to respond to the three "new" claims raised by Petitioner. Accordingly, the Court hereby **ORDERS** that Respondent file its response addressing all six of Petitioner's claims on or before February 25, 2011.

IT IS SO ORDERED.

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

Dated: January 10, 2011

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 January 10, 2011.

S/Marie E. Verlinde
Case Manager
(810) 984-3290