

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

KEITH BERNARD SMITH,

Petitioner,

v.

ANTHONY STEWART,

Respondent,

Civil No. 2:11-CV-10261

HONORABLE ARTHUR J. TARNOW
UNITED STATES DISTRICT JUDGE

OPINION AND ORDER: (1) GRANTING MOTION TO REINSTATE THE HABEAS PETITION AND ORDERING THE CLERK OF THE COURT TO REOPEN THE CASE TO THE COURT'S ACTIVE DOCKET, (2) AMENDING CAPTION, (3) GRANTING THE MOTION TO AMEND PETITION FOR WRIT OF HABEAS CORPUS, (4) DIRECTING THAT THE AMENDED PETITION (Dkt. # 38) BE SERVED UPON THE RESPONDENT AND THE MICHIGAN ATTORNEY GENERAL, AND (5) DIRECTING RESPONDENT TO FILE A SUPPLEMENTAL ANSWER AND ANY ADDITIONAL RULE 5 MATERIALS IN THIS CASE

Petitioner filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, which was held in abeyance to permit Petitioner to return to the state courts to exhaust additional claims.

Petitioner filed a motion to reinstate the petition and to amend the habeas petition, which is GRANTED. The Clerk of the Court shall serve a copy of the amended petition for writ of habeas corpus upon respondent and the Michigan Attorney General's Office by first class mail. Respondent shall file a supplemental answer and the Rule 5 materials within **sixty (60)** days of the Court's order. The caption is amended to reflect the name of Petitioner's current warden, Anthony Stewart.

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). Petitioner alleges in his amended petition that his claims were exhausted with the state courts. The case is reopened.

The caption in this case is amended to reflect that the proper respondent in this case is now the warden of the prison where petitioner is currently incarcerated. See *Edwards Johns*, 450 F. Supp. 2d 755, 757 (E.D. Mich. 2006); See also Rule 2(a), 28 foll. U.S.C. § 2254.

Petitioner's proposed amended habeas petition should be granted because it advances new claims that may have arguable merit. See *e.g. Braden v. United States*, 817 F.3d 926, 930 (6th Cir. 2016).

The Clerk of the Court shall serve a copy of the amended petition for writ of habeas corpus [Dkt. # 38] 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*, No. 04-71209, 2005 WL 1861943, * 2 (E.D. Mich. Aug. 2, 2005). Respondent shall file a supplemental answer to the amended petition within sixty days of the Court's order. See *Erwin v. Elo*, 130 F. Supp. 2d 887, 891 (E.D. Mich. 2001); 28 U.S.C. § 2243.¹ Respondent shall provide any additional Rule 5 materials with

¹ Respondent filed an answer to petitioner's original habeas petition on June 13, 2011 and is therefore only required to file an answer addressing the

the answer. See *Griffin v. Rogers*, 308 F.3d 647, 653 (6th Cir. 2002); Rules Governing § 2254 Cases, Rule 5, 28 U.S.C. foll. § 2254. Petitioner has forty five days from the receipt of the answer to file a reply brief, if he so chooses. See Rule 5(e) of the Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254.

ORDER

IT IS ORDERED THAT:

(1) The motion to reinstate the petition is **GRANTED**. The Clerk of the Court shall reopen the habeas petition to the Court's active docket.

(2) The caption of the case is amended.

(3) The motion to amend the petition for writ of habeas corpus is **GRANTED**.

(4) The Clerk of the Court shall serve a copy of the amended petition for writ of habeas corpus [Dkt. # 38], and a copy of this Order on Respondent and the Attorney General by first class mail.

(5) Respondent shall file a supplemental answer and any additional Rule 5 materials within **sixty (60) days** of the date of this order or show cause why they are unable to comply with the order.

(5) Petitioner shall have **forty five days** from the date that he receives the answer to file a reply brief.

s/Arthur J. Tarnow
HON. ARTHUR J. TARNOW
UNITED STATES DISTRICT COURT

DATED: January 10, 2018

claims raised by petitioner in his amended petition.