

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TRACY JODETTE AUGUST, #714643,

Petitioner,

v.

CASE NO. 2:11-CV-11717
HONORABLE PAUL D. BORMAN

MILLICENT WARREN,

Respondent.

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ORDER DENYING PETITIONER'S MOTION TO SUPPLEMENT

This matter is before the Court on Petitioner's motion to supplement her pending habeas petition with a report from the Governor's Indigent Defense Advisory Commission, which was issued on June 23, 2012 and which she believes is relevant to her ineffective assistance of counsel claim. The Court has discretion to allow amendment of the habeas petition. *See* Rule 11, Rules Governing 28 U.S.C. Section 2254 Cases; Fed. R. Civ. P. 15(a). The Court may also permit the record to be expanded to include additional materials relevant to the determination of the habeas petition. *See* Rule 7, Rules Governing Section 2254 Cases.

Having considered the matter, the Court finds that Petitioner's request to supplement must be denied. The report is not relevant to Petitioner's habeas action. The issue on habeas review is whether counsel was effective in Petitioner's state criminal proceedings, not whether the indigent representation system in Michigan is flawed. Moreover, because the report is new and was not part of the state court record, it may not be considered by the Court on habeas review. *See Cullen v. Pinholster*, U.S. , 131 S. Ct. 1388, 1398 (2011) (ruling that habeas review under 28 U.S.C. §2254(d) is "limited to the

record that was before the state court that adjudicated the claim on the merits”). Accordingly, the Court **DENIES** Petitioner’s motion.

IT IS SO ORDERED.



PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

Dated: 9-24-12