

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BARUCH WINSTON,

Petitioner,

Case Nos. 12-cv-14475 and 14-cv-14655

v.

HONORABLE STEPHEN J. MURPHY, III

THOMAS WINN,

Respondent.

_____ /

ORDER CONSOLIDATING CASES

Baruch Winston, a Michigan Department of Corrections prisoner, filed a second petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his Wayne County Circuit Court conviction for first-degree criminal sexual conduct.

Winston's first habeas petition was assigned to the Court under Case Number 12-14475. That case was dismissed without prejudice because Winston had not exhausted his state court remedies. The order closing the case specifically directed Winston to file a motion to re-open that case after he completed state court review. No. 12-14475, ECF No. 5. Winston did not file a motion to re-open the case as directed, but he did file an amended petition under that case number on March 14, 2014. Winston then filed the instant case, Case Number 14-14655, challenging the same conviction.

Federal Rule of Civil Procedure 42(a) provides as follows:

(a) Consolidation. If actions before the court involve a common question of law or fact, the court may:

- (1) join for hearing or trial any or all matters at issue in the actions;
- (2) consolidate the actions; or
- (3) issue any other orders to avoid unnecessary cost or delay.

Fed. R. Civ. P. 42(a).

It is within the discretion of the district court to determine whether cases involving the same factual and legal questions should be consolidated. *Stemler v. Burke*, 344 F.2d 393, 396 (6th Cir. 1965). In the instant case, Winston is challenging the same conviction in both cases. Because the two cases involve common questions of fact and law, the Court will consolidate the two cases pursuant to Civil Rule 42(a).

ORDER

WHEREFORE, it is hereby **ORDERED** that Case Numbers 12-14475 and 14-14655 are hereby **CONSOLIDATED**. The Clerk of the Court shall docket a copy of this order in both cases.

IT IS FURTHER ORDERED that the Clerk shall docket all of the documents filed in Case Number 14-14655 in Case Number 12-14475. All future documents shall be filed under Case Number 12-14475.

IT IS FURTHER ORDERED that Case Number 12-14475 is **RE-OPENED**.

IT IS FURTHER ORDERED that Case Number 14-14655 is **DISMISSED**.

SO ORDERED.

s/Stephen J. Murphy, III
STEPHEN J. MURPHY, III
United States District Judge

Dated: July 20, 2015

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on July 20, 2015, by electronic and/or ordinary mail.

s/Carol Cohron
Case Manager