

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

CARLOS LAMONT HICKS,

Petitioner,

Case Number: 2:13-CV-11708
HONORABLE SEAN F. COX

v.

WILLIE SMITH,

Respondent.

**OPINION AND ORDER CONSTRUING PETITION FOR WRIT OF
HABEAS CORPUS AS MOTION TO LIFT STAY AND DENYING MOTION**

Michigan state prisoner Carlos Lamont Hicks, filed a *pro se* petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, challenging his convictions for assault with intent to murder, felon in possession of a firearm, and possession of a firearm during the commission of a felony. Petitioner then filed a motion to stay proceedings so that he could exhaust his claims in state court. On August 25, 2014, the Court granted Petitioner's motion and stayed the petition. The Court imposed certain conditions under which Petitioner was required to proceed and administratively closed the case. On January 31, 2017, Petitioner filed a petition for a writ of habeas corpus.¹ The Court construes the petition as a motion to lift stay.

The conditions of the Court's stay order required Petitioner to file a motion for

¹ The petition was filed as a new case and assigned to the Honorable Bernard A. Friedman under case number 2:17-cv-10947. Judge Friedman ordered the petition re-filed in this earlier-filed habeas petition and dismissed the 2017 case without prejudice.

relief from judgment within sixty days from the date of the Court's order staying the petition and further required Petitioner to file a motion to lift the stay and an amended petition within sixty days after the conclusion of state-court proceedings. Petitioner timely filed a motion for relief from judgment. The Michigan trial court denied Petitioner's motion for relief from judgment. *People v. Hicks*, No. 09-029908-FC (Wayne County Circuit Court August 14, 2015). The Michigan Court of Appeals denied leave to appeal. *People v. Hicks*, No. 329059 (Mich. Ct. App. Dec. 16, 2015). Finally, on October 26, 2016, the Michigan Supreme Court denied Petitioner's application for leave to appeal. *People v. Hicks*, 500 Mich. 880 (Mich. Oct. 26, 2016).

Petitioner's state court proceedings concluded on October 26, 2016. Petitioner signed his petition for a writ of habeas corpus, which the Court has construed as a motion to lift stay, on January 31, 2017. The motion was not filed within sixty days after exhaustion of state court remedies as required by the Court's order granting a stay. Therefore, the Court will deny the motion. Accordingly,

IT IS ORDERED that the petition for a writ of habeas corpus is construed as a motion to lift stay and the motion is **DENIED**. The case remains closed for administrative purposes.

Dated: May 31, 2017

s/Sean F. Cox
Sean F. Cox
U. S. District Judge

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PROOF OF SERVICE

I hereby certify that on May 31, 2017, the foregoing document was served on counsel of record via electronic means and upon Carlos Hicks via First Class mail at the address below:

Carlos Hicks 281347
IONIA MAXIMUM CORRECTIONAL FACILITY
1576 W. BLUEWATER HIGHWAY
IONIA, MI 48846

s/J. McCoy
Case Manager